# THE GENERAL STATUTES OF NORTH CAROLINA

## ANNOTATED

### 1994 CUMULATIVE SUPPLEMENT

## Volume 14

### Chapters 106 through 112

*Prepared under the Supervision of*

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

*Under the Direction of*

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and F. J. Payne

Annotated through 443 S.E.2d 468. For complete scope of annotations, see scope of volume page.

**Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.**

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# Preface

This Cumulative Supplement to Volume 14 contains the general laws of a permanent nature enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

# User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

# Scope of Volume

**Statutes:**

Permanent portions of the General Laws enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session affecting Chapters 106 through 112 of the General Statutes.

**Annotations:**

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 336, p. 77.
North Carolina Court of Appeals Reports through Volume 114, p. 505.
South Eastern Reporter 2nd Series through Volume 443, p. 468.
Federal Reporter 3rd Series through Volume 21, p. 1127.
Federal Supplement through Volume 848, p. 212.
Federal Rules Decisions through Volume 154, p. 535.
Bankruptcy Reports through Volume 166, p. 498.
Supreme Court Reporter through Volume 114, p. 1877.
North Carolina Law Review through Volume 72, p. 1128.
Wake Forest Law Review through Volume 29, p. 646.
Campbell Law Review through Volume 16, p. 145.
Duke Law Journal through Volume 43, p. 1348.
North Carolina Central Law Journal through Volume 20, p. 229.
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Federal Supplement through Volume 846, p. 315.
Federal Rules Decisions through Volume 154, p. 536.
Bankruptcy Reports through Volume 166, p. 498.
Supreme Court Reporter through Volume 114, p. 1897.
North Carolina Law Review through Volume 72, p. 1128.
Wake Forest Law Review through Volume 29, p. 949.
Campbell Law Review through Volume 16, p. 145.
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# The General Statutes of North Carolina 1994 Cumulative Supplement

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## VOLUME 14

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## ARTICLE 1.

## *Department of Agriculture.*

## Part 1A. Collection and Refund of Fees and Taxes.

### § 106-9.2. Records and reports required of persons paying fees or taxes to Commissioner or Department; examination of records; determination of amount due by Commissioner in case of noncompliance.

(a) **(Effective October 1, 1994 — See editor's note)** Every person paying fees or taxes to the Commissioner of Agriculture or to the Department of Agriculture under the provisions of this Chapter shall keep such records as the Commissioner may prescribe to indicate accurately the fees or taxes due to the Commissioner or Department, and such records shall be preserved for a period of three years, and shall at all times during the business hours of the day be subject to inspection by the Commissioner or his deputies or such other agents as may be duly authorized by the Commissioner. Any person failing to comply with or violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

(b) It shall be the duty of the Commissioner of Agriculture, by competent auditors, to have the books and records of every person paying fees or taxes to the Commissioner or Department examined at least once each year to determine if such persons are keeping complete records as provided by this section, and to determine if correct reports have been made to the Commissioner or Department covering the total amount of fees or taxes due by such persons.

(c) If any person shall fail, neglect or refuse to keep such records or to make such reports or pay fees or taxes due as required, and within the time provided in this Chapter, the Commissioner shall immediately inform himself as best he may as to the matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain, determine and fix the amount of fees or taxes due the State from such delinquent person for the period covering the delinquency. The Commissioner shall proceed immediately to collect the fees or taxes due the State, including any penalties and interest thereon, in the manner provided in this Article. (1963, c. 458; 1993, c. 539, s. 736; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentence of subsection (a) substituted "Class 1 misdemeanor" for "misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court".

## Part 3. Powers and Duties of Department and Board.

### § 106-21.1. Feed Advisory Service; fee.

The Department of Agriculture shall operate a Feed Advisory Service for the analysis of animal feeds in order to provide a feeding management service to all animal producers in North Carolina. A fee of ten dollars ($10.00) shall accompany each feed sample sent to the Department for testing. A fee of seventy-five dollars ($75.00) shall accompany each feed sample which is to be tested for the presence of fumonisin. (1979, c. 1026; 1989, c. 544, s. 9; 1991, c. 649, s. 1.)

**Editor's Note.** — Session Laws 1989, c. 544, s. 23 provides: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "ten dollars ($10.00)" for "five dollars ($5.00)."

The 1991 amendment, effective July 1, 1991, substituted "operate" for "establish as a pilot program" in the first sentence and added the last sentence.

### § 106-22. Joint duties of Commissioner and Board.

The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture shall:

(1) General. — Investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizers and composts, and for the inducement of immigration and capital as he may think proper; but he is especially charged:

(2) Commercial Fertilizers. — With such supervision of the trade in commercial fertilizers as will best protect the interests of the farmers, and shall report to district attorneys and to the General Assembly information as to the existence or formation of trusts or combinations in fertilizers or fertilizing materials which are or may be offered for sale in this State, whereby the interests of the farmers may be injuriously affected, and shall publish such information in the Bulletin of the Department;

(3) **(Effective October 1, 1994 — See editor's note)** Cattle and Cattle Diseases. — With investigations adapted to promote the improvement of milk and beef cattle, and especially investigations relating to the diseases of cattle and

other domestic animals, and shall publish and distribute from time to time information relative to any contagious diseases of stock, and suggest remedies therefor, and shall have power in such cases to quarantine the infected animals and to regulate the transportation of stock in this State, or from one section of it to another, and may cooperate with the United States Department of Agriculture in establishing and maintaining cattle districts or quarantine lines, to prevent the infection of cattle from splenic or Spanish fever. Any person willfully violating such regulations shall be liable in a civil action to any person injured, and for any and all damages resulting from such conduct, and shall also be guilty of a Class 1 misdemeanor;

(4) Honey and Bee Industry. — With investigations adapted to promote the improvement of the honey and bee industry in this State, and especially investigations relating to the diseases of bees, and shall publish and distribute from time to time information relative to such diseases, and such remedies therefor, and shall have power in such cases to quarantine the infected bees and to control or eradicate such infections and to regulate the transportation or importation into North Carolina from any other state or country of bees, honey, hives, or any apiary equipment, or from one section of the State to another, and may cooperate with the United States Department of Agriculture in establishing and maintaining quarantine lines or districts. The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall have power to make rules and regulations to carry out the provisions of this section; and in event of failure to comply with any such rules and regulations, the Commissioner of Agriculture or his duly authorized agent is authorized to confiscate and destroy any infected bees and equipment and any bees and/or used apiary equipment moved in violation of these regulations;

(5) **(Effective October 1, 1994 — See editor's note)** Insect Pests. — With investigations relative to the ravages of insects and with the dissemination of such information as may be deemed essential for their abatement, and making regulations for destruction of such insects. The willful violation of any of such regulations by any person shall be a Class 1 misdemeanor;

(6) New Agricultural Industries. — With investigations and experiments directed to the introduction and fostering of new agricultural industries, adapted to the various climates and soils of the State, especially the culture of truck and market gardens, the grape and other fruits;

(7) Drainage and Irrigation; Fertilizer Sources. — With the investigations of the subject of drainage and irrigation and publication of information as to the best methods of both, and what surfaces, soils, and locations may be most benefited by such improvements; also with the collection and publication of information in regard to localities, character, accessibility, cost, and modes of utilization of native mineral and domestic sources of fertilizers, including for-

mulae for composting adapted to the different crops, soils, and materials;

(8) Farm Fences. — With the collection of statistics relating to the subject of farm fences, with suggestions for diminishing their cost, and the conditions under which they may be dispensed with altogether;

(9) Sales of Fertilizers, Seeds, and Food Products. — With the enforcement and supervision of the laws which are or may be enacted in this State for the sale of commercial fertilizers, seeds and food products, with the authority to make regulations concerning the same;

(10) Inducement of Capital and Immigration. — With the inducement of capital and immigration by the dissemination of information relative to the advantages of soil and climate and to the natural resources and industrial opportunities offered in this State, by the keeping of a land registry and by the publication of descriptions of agricultural, mineral, forest, and trucking lands which may be offered the Department for sale; which publication shall be in tabulated form, setting forth the county, township, number of acres, names and addresses of owners, and such other information as may be needful in placing inquiring homeseekers in communication with landowners; and he shall publish a list of such inquiries in the Bulletin for the benefit of those who may have land for sale;

(11) Diversified Farming. — With such investigations as will best promote the improvement and extension of diversified farming, including the rotation of crops, the raising of home supplies, vegetables, fruits, stock, grasses, etc.;

(12) Farmers' Institutes. — With the holding of farmers' institutes in the several counties of the State, as frequently as may be deemed advisable, in order to instruct the people in improved methods in farming, in the beneficial use of fertilizers and composts, and to ascertain the wants and necessities of the various farming communities; and may collect the papers and addresses made at these institutes and publish the same in pamphlet form annually for distribution among the farmers of the State. He may secure such assistants as may be necessary or beneficial in holding such institutes;

(13) Publication of Bulletin. — The Commissioner shall publish bulletins which shall contain a list of the fertilizers and fertilizing materials registered for sale each year, the guaranteed constituents of each brand, reports of analyses of fertilizers, the dates of meeting and reports of farmers' institutes and similar societies, description of farm buildings suited to our climate and needs, reports of interesting experiments of farmers, and such other matters as may be deemed advisable. The Department may determine the number of bulletins which shall be issued each year;

(14) Reports to Legislature. — He shall transmit to the General Assembly at each session a report of the operations of the Department with suggestions of such legislation as may be deemed needful;

(15) Repealed by Session Laws 1993, c. 561, s. 116, effective August 1, 1993.

(16) State Agricultural Policies. — Establish State government policies relating to agriculture.

(17) Agronomic Testing. — Provide agronomic testing services and charge reasonable fees for plant analysis and nematode testing. The Board shall charge at least four dollars ($4.00) for plant analysis and at least two dollars ($2.00) for nematode testing. (1901, c. 479, s. 4; Rev., ss. 3294, 3724, 3944; 1917, c. 16; C.S., s. 4688; 1939, c. 173; 1973, c. 47, s. 2; 1979, c. 344, s. 1; 1981, c. 495, s. 9; 1989, c. 544, s. 4; 1993, c. 539, ss. 737, 738; c. 561, s. 116(d); 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1989, c. 544, s. 23 provides: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, added the second sentence of subdivision (17).

Session Laws 1993, c. 539, ss. 737 and 738, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentences of subdivisions (3) and (5) inserted "Class 1" preceding "misdemeanor".

Session Laws 1993, c. 561, s. 116, effective August 1, 1993, repealed subdivision (15).

## § 106-22.1. State farms.

State-owned farmland, including timberland, allocated to the Department of Agriculture for the State Farm Program, shall be managed by the Department for research, teaching, and demonstration in agriculture, forestry, and aquaculture. Research projects on the State farms shall be approved by the Department. The Department may sell surplus commodities produced on the farms. (1989, c. 500, s. 107(c).)

**Editor's Note.** — Session Laws 1989, c. 500, s. 129 made this section effective July 1, 1989.

Session Laws 1989, c. 500, s. 2 provides: "This act shall be known as 'The Current Operations Appropriations Act of 1989.'"

Session Laws 1989, c. 500, s. 128 contains a severability clause.

## § 106-22.2. Museum of Natural Sciences; Maritime Museum; disposition of objects.

Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other law pertaining to surplus State property, the Department of Agriculture may sell or exchange any object from the collections of the Museum of Natural Sciences and the Maritime Museum when it would be in the best interests of the Museums to do so. Sales or exchanges shall be conducted in accordance with generally accepted practices for accredited museums. If an object is sold, the net proceeds of the sale shall be deposited in the State treasury to the credit of a special fund to be used for the improvement of the Museums' collections or exhibits. (1991 (Reg. Sess., 1992), c. 900, s. 175.)

**Editor's Note.** — Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 183 made this section effective July 1, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 2, provides: "This act shall be known as 'The Current Operations Appropriations Act of 1992.'"

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 182 is a severability clause.

## § 106-22.3. Organic Production Program.

(a) The Board of Agriculture may establish rules, standards, guidelines, and policies for the establishment and implementation of a voluntary program for the certification of organically produced agricultural products.

(b) The Commissioner of Agriculture may enter into agreements with the United States Department of Agriculture and may apply for approval, accreditation, certification, or similar authority as may be necessary to comply with the requirements of the Organic Foods Production Act of 1990, Public Law 101-624. (1993, c. 147, s. 1.)

**Effect of Amendments.** — Session Laws 1993, c. 147, s. 2 makes this section effective June 10, 1993.

## Part 5. Cooperation between Department and United States Department of Agriculture, and County Commissioners.

## § 106-24.1. Confidentiality of information collected and published.

All information published by the Department of Agriculture pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information received pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. Information collected by the Department from individual farm operators for the purposes of its animal health programs may be disclosed by the State Veterinarian when, in his judgment, the disclosure will assist in the implementation of these programs. (1979, c. 228, s. 3; 1993, c. 5, s. 1.)

**Effect of Amendments.** — The 1993 amendment, effective March 10, 1993, added the last sentence.

## ARTICLE 1B.

## *State Farm Operations Commission.*

### §§ 106-26.13 through 106-26.21: Repealed by Session Laws 1989, c. 500, s. 107(a), effective July 1, 1989.

**Editor's Note.** — Session Laws 1989, c. 500, s. 2 provides: "This act shall be known as 'The Current Operations Appropriations Act of 1989.'"

Session Laws 1989, c. 500, s. 128 contains a severability clause.

## ARTICLE 2A.

## *North Carolina Soil Additives Act of 1977.*

### § 106-50.31. Registration of additives.

Every soil additive distributed in North Carolina shall be registered with the Commissioner by the person whose name appears on the label on forms furnished by the Commissioner. The applicant shall furnish such information as the Commissioner may require. In determining the acceptability of any product for registration, the Commissioner may require proof of claims made for the soil additive. If no specific claims are made, the Commissioner may require proof of usefulness and value of the soil additive. As evidence of proof, the Commissioner may rely on experimental data furnished by the applicant and may require that such data be developed by a recognized research or experimental institution. The Commissioner may further require that such data be developed from tests conducted under conditions identical to or closely related to those present in North Carolina. The Commissioner may reject any data not developed under such conditions and may rely on the advice of the Director of the North Carolina Agricultural Experiment Station in evaluating data for registration.

The registration fee shall be one hundred dollars ($100.00) per year for each product. Registration shall expire on December 31, annually, unless an application for renewal has been received prior to the expiration date.

The application for registration shall include the following:

(1) The name and address of the registrant;
(2) Product name;
(3) Guaranteed analysis;
    a. Active ingredients (name of each ingredient and percent)
    b. Inert ingredients (name of each ingredient and percent)
(4) Directions for use;
(5) Purpose of product.

The application shall be accompanied by the label for the product and all advertisements including brochures, posters, or other information promoting the product. The registrant is responsible for all guaranteed analysis and claims appearing on the label. (1977, c. 233, s. 4; 1989, c. 544, s. 8.)

**Editor's Note.** — Session Laws 1989, c. 544, s. 23 provides: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "one hundred dollars ($100.00)" for "fifty dollars ($50.00)" in the first sentence of the second paragraph.

## § 106-50.41. (Effective October 1, 1994 — See editor's note) Penalties.

Any person violating the provisions of this Article or the regulations adopted thereunder, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties. (1977, c. 233, s. 14; 1993, c. 539, s. 739; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence substituted "Class 2 misdemeanor" for "misdemeanor and shall be fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000) or be imprisoned for not more than 60 days, or both, in the discretion of the court".

# ARTICLE 4C.

## *Structural Pest Control Act.*

## § 106-65.23. Structural Pest Control Division of Department of Agriculture recreated; Director; Structural Pest Control Committee created; appointment; terms; quorum.

There is hereby recreated, within the North Carolina Department of Agriculture, a Division thereof, to be known as the Structural Pest Control Division of said Department. The Commissioner of Agriculture is hereby authorized to appoint a Director of said Division whose duties and authority shall be determined by the Commissioner. Said Director shall act as secretary to the Structural Pest Control Committee herein created.

There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture to serve on said Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of said University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of said University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of his choice from the entomology faculty of said University to serve on said Committee at the pleasure of the dean. The Secretary of Environment, Health, and Natural Resources shall appoint one member of the Committee who shall be an epidemiologist in the Division of Health Services and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of said Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company. The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest control industry, the pesticide industry, the Department of Agriculture, the Department of Environment, Health, and Natural Resources and the School of Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant. A member of the Committee appointed by the Governor shall not succeed himself.

The Committee shall make final decisions under this Article concerning licenses, certified applicator cards, and identification cards. The Committee shall report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.

The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

Four members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, all members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee. (1955, c. 1017; 1057, c. 1243, s. 1; 1967, c. 1184, s. 1; 1969, c. 541, s. 7; 1973, c. 556, s. 1; 1975, c. 570, ss. 1, 2; 1977, c. 231, s. 2; 1987, c. 827, s. 26; 1989, c. 238; c. 727, s. 219(30).)

**Effect of Amendments.** — Session Laws 1989, c. 238, s. 1, effective June 6, 1989, in the second paragraph, substituted "the following members" for "five members" in the first sentence, substituted the present second sentence for the former second sentence which read: "The Commissioner of Agriculture shall designate one member of the Board of Agriculture who shall serve as an ex officio member of said Committee for such time as he is a member of the Board of Agriculture," added the present sixth sentence, and added the present ninth and tenth sentences; in the sixth paragraph, in the first sentence, substituted "Four members" for "Three members," and substituted "four votes" for "three votes"; substituted "four members" for "three members" in the seventh paragraph; and added "Except as otherwise provided herein" at the beginning of the next to the last paragraph.

Session Laws 1989, c. 727, s. 219(30), effective July 1, 1989, in the second paragraph, substituted "Environment, Health, and Natural Resources" for "Human Resources" in the sixth and ninth sentences of the second paragraph.

## § 106-65.24. Definitions.

For the purposes of this Article, the following terms, when used in the Article or the rules and regulations, or orders made pursuant thereto, shall be construed respectively to mean:

(1) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(1a) "Applicant for a certified applicator's identification card" means any person making application to use restricted use pesticides in any phase of structural pest control.

(2) "Applicant for a license" means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in structural pest control, control of structural pests or household pests, or fumigation operations, or any person qualified under the terms of this Article.

(3) "Attractants" means substances, under whatever name known, which may be toxic to insects and other pests but are used primarily to induce insects and other pests to eat poisoned baits or to enter traps.

(3a) Repealed by Session Laws 1989, c. 725, effective October 1, 1989.

(3b) "Call office" means any office or telephone answering service other than a licensee's home office which is used by a licensee to conduct structural pest control work and which employs no more than one individual engaged in structural pest control work.

(4) "Certified applicator" means any individual who is certified under G.S. 106-65.25 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

(5) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.

(6) "Committee" means the Structural Pest Control Committee.

(6a) "Deviation" means failure of the licensee or certified applicator or registered technician card holder to follow any rule adopted by the Committee under provisions of this Article.

(7) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(8) Repealed by Session Laws 1975, c. 570, s. 4.

(8a) "Director" means the Director of the Structural Pest Control Division of the Department of Agriculture.

(9) "Employee" means any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood-destroying organisms.

(9a) "Enforcement agency" means the Structural Pest Control Division of the Department of Agriculture.

(10) "Fumigants" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.

(11) "Fungi" means wood-decaying fungi.

(11a) "Home office" means the licensee's principal place of business.

(12) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and sowbugs.

(13) "Insecticides" means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.

(14) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(14a) The term "labeling" means all labels and other written, printed, or graphic matter:

a. Upon the pesticide (or device) or any of its containers or wrappers;

b. Accompanying the pesticide (or device) at any time;

c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by the law to conduct research in the field of pesticides.

(15) "Licensee" means the designated person in charge of the business establishment or business entity, whether it be individual, firm, partnership, corporation, association or any organization, or any combination thereof, engaged in pest control work covered under the provisions of this Article. Each branch office of a business establishment is to be in charge of a person who has a license herein provided for.

(16) "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(17) "Pest" means any living organism, including but not limited to, insects, rodents, birds, and fungi, which the Commissioner declares to be a pest.

(18) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

(19) "Registered pesticide" means a pesticide which has been registered by federal and/or State agency responsible for registering pesticides.

(19a) "Registered technician" means any individual who is required to be registered with the Structural Pest Control Division under G.S. 106-65.31.

(20) "Repellents" means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed because of capacity for preventing the entrance or attack of pests.

(21) "Restricted use pesticide" means a pesticide which has been designated as such by the federal and/or State agency responsible for registering pesticides.

(22) "Rodenticides" means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.

(23) "Structural pest control" means the control of wood-destroying organisms or household pests (including, but not limited to, animals such as moths, cockroaches, ants, beetles, flies, mosquitoes, ticks, wasps, bees, fleas, mites, silverfish, millipedes, centipedes, sowbugs, crickets, termites, wood borers, etc.), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, attractants, rodenticides, fungicides, and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings, and other structures (including household structures, commercial buildings and other structures in all stages of construction), and outside areas, as well as all phases of fumigation, including treatment of products by

vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof.

(24) "Under the direct supervision of a certified applicator" means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied. (1955, c. 1017; 1957, c. 1243, s. 2; 1967, c. 1184, ss. 2, 3; 1973, c. 556, s. 2; 1975, c. 570, ss. 3, 4; 1977, c. 231, ss. 3-5; 1989, c. 725, s. 1.)

**Effect of Amendments.** — The 1989 amendment, effective October 1, 1989, repealed subdivision (3a) pertaining to the definition of "Branch office"; added subdivisions (3b), (6a), (11a), and (19a), and substituted "Restricted use" for "Restricted-use" in subdivision (21).

## § 106-65.25. Phases of structural pest control; license required; exceptions.

(a) The Committee shall classify license phases to be issued under this Article. Separate phases or subphases shall be specified for:

(1) Control of household pests by any method other than fumigation ("P" phase);
(2) Control of wood-destroying organisms by any method other than fumigation ("W" phase); and
(3) Fumigation ("F" phase).

(b) It shall be unlawful for any person to act in the capacity of a structural pest control licensee, advertise as, offer to engage in, or engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control unless he is licensed as provided for in this Article. A license is required for each phase of structural pest control. No person may hold more than one license for each phase. The licensee shall be responsible for the supervision of the work performed under his license.

(c) A licensee may not establish any office other than his home office from which more than one employee is performing structural pest control work unless a separate licensee is placed in charge of that office.

(d) A license is not required for any person (or his full-time regular employees) doing structural pest control work on his own property: provided, however, that no fee may be charged for structural pest control work performed by any such person.

(e) Any person who uses a restricted use pesticide in any phase of structural pest control, whether it be on his own property or on the property of another, must:

(1) Qualify as a certified applicator for that phase of structural pest control; or
(2) Be under the direct supervision of a certified applicator possessing a valid identification card for that phase of structural pest control.

(f) Persons who demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration or conduct field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides must possess a valid certified applicator's identification card. Included in the first group are such persons as extension representatives demonstrating pesticide products and those individuals demonstrating methods used on public programs. The second group includes local, State, federal, commercial, and other persons conducting field research on or utilizing restricted use pesticides.

This subsection does not apply to the following persons:

(1) Persons conducting laboratory-type research involving restricted use pesticides; or

(2) Doctors of medicine and doctors of veterinary medicine applying restricted use pesticides as drugs or medication during the course of their normal practice.

(g) Any person issued a license for any one or any combination of the phases of structural pest control shall be deemed to be a "certified applicator" to use or supervise the use of restricted use pesticides so long as the pesticides are being used only in the phase(s) of structural pest control for which the person is licensed.

(h) Licenses and certified applicator's identification cards may only be issued to individuals. License certificates and certified applicator's identification cards shall be issued in the name of the individual, shall bear the name and address of his business or employer's business and shall indicate the phase or phases for which the individual is qualified and such other information as the Committee may specify. (1955, c. 1017; 1957, c. 1243, s. 3; 1967, c. 1184, s. 4; 1973, c. 556, s. 3; 1975, c. 570, s. 5; 1989, c. 725, s. 2.)

**Effect of Amendments.** — The 1989 amendment, effective October 1, 1989, rewrote this section.

## § 106-65.27. Examinations of applicants; fee; license not transferable.

(a) Certified Applicator. — All applicants for a certified applicator's identification card shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Competency shall be determined on the basis of written examinations to be provided and administered by the Committee and, as appropriate, performance testing. Testing shall be based upon examples of problems and situations appropriate to the particular phase or subphase of structural pest control for which application is made and shall include, where relevant, the following areas of competency:

(1) Label and labeling comprehension.
(2) Safety factors associated with pesticides — toxicity, precautions, first aid, proper handling, etc.
(3) Influence of and on the environment.
(4) Pests — identification, biology, and habits.
(5) Pesticides — types, formulations, compatibility, hazards, etc.
(6) Equipment — types and uses.
(7) Application techniques.
(8) Laws and regulations.

An applicant for a certified applicator's identification card shall submit an examination fee of ten dollars ($10.00) for each phase or subphase of structural pest control in which the applicant chooses to be examined. An examination for more than one phase or subphase may be taken at the same time at any regularly scheduled examination. Frequency of such examinations shall be at the discretion of the Committee, provided that a minimum of two examinations be given annually. The examination will cover each phase or subphase of structural pest control for which application is being made.

(b) License. — Each applicant for an original license must demonstrate upon written examination, to be provided and administered by the Committee, his competency as a structural pest control operator for the phase or subphase in which he is applying for a license. Frequency of such examinations shall be at the discretion of the Committee, provided that a minimum of two examinations shall be given annually. The examination will cover each phase or subphase of structural pest control for which application is being made. All applicants for a license shall register with the Division on a prescribed form. A license examination fee of twenty-five dollars ($25.00) shall be charged for each phase or subphase of structural pest control in which the applicant chooses to be examined. An examination for more than one phase or subphase of structural pest control may be taken at the same time.

(c) A license, certified applicator's identification card or registered technician's identification card is not transferable from one person to another. A licensee or certified applicator may change the name of his business or employer's business on his license certificate or certified applicator's identification card upon application to the Division.

(c1) When there is a transfer of ownership, management, or operation of a structural pest control business or in the event of the death or disability of a licensee there shall be not more than a total of 90 days during any 12-month period in which said business shall operate without a licensee assigned to it.

The owner, partnership, corporation, or other entity operating said business shall, within 10 days of such transfer or disability or within 30 days of death, designate in writing to the Division a certified applicator who shall be responsible for and in charge of the structural pest control operations of said business during the 90-day period. If the owner, partnership, corporation, or other entity operating the business fails to designate a certified applicator who shall be responsible for the operation of the business during the 90-day period, the business shall cease all structural pest control activities upon expiration of the applicable notification period and shall not resume operations until a certified applicator is so designated.

During the 90-day period the use of any restricted use pesticide shall be by or under the direct supervision of the certified applicator designated in writing to the Division. The designated certified applicator shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision.

The new licensee shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision.

(d) The Committee shall by regulation provide for:

(1) Establishing categories of certified applicators, along with such appropriate subcategories as are necessary, to meet the requirements of this Article;
(2) All licensees licensed prior to October 21, 1976, to become qualified as certified applicators; and
(3) Requalifying certified applicators thereafter as required by the federal government at intervals no more frequent than that specified by federal law and federal regulations. (1955, c. 1017; 1967, c. 1184, s. 6; 1973, c. 556, ss. 5, 6; 1975, c. 570, s. 7; 1977, c. 231, s. 6; 1989, c. 725, s. 3.)

**Effect of Amendments.** — The 1989 amendment, effective October 1, 1989, rewrote subsections (a) through (c), and added subsection (c1).

## § 106-65.28. Revocation or suspension of license or identification card.

(a) Any license or certified applicator's identification card or registered technician's identification card may be denied, revoked or suspended by a majority vote of the Committee for any one or more of the following causes:

(1) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage; or the use of methods or materials which are not reasonably suitable for the purpose contracted.
(2) Failure of the licensee or certified applicator to give the Committee, the Commissioner, or their authorized representatives, upon request, true information regarding methods and materials used, or work performed.
(3) Failure of the licensee or certified applicator to make registrations herein required or failure to pay the registration fees.
(4) Any misrepresentation in the application for a license or certified applicator's identification card or registered technician's identification card.
(5) Willful violation of any rule or regulation adopted pursuant to this Article.
(6) Aiding or abetting a licensed or unlicensed person or a certified applicator or a noncertified person to evade the provisions of this Article, combining or conspiring with such a licensed or unlicensed person or a certified applicator or noncertified person to evade the provisions of this Article, or allowing one's license, certified applicator's identification card or registered technician's identification card, to be used by any person other than the individual to whom it has been issued.
(7) Impersonating any State, county or city inspector or official.
(8) Storing or disposing of containers or pesticides by means other than those prescribed on the label or adopted regulations.
(9) Using any pesticide in a manner inconsistent with its labeling.

(10) Payment, or the offer to pay, by any licensee to any party to a real estate transaction of any commission, bonus, rebate, or other thing of value as compensation or inducement for the referral to such licensee of structural pest control work arising out of such transaction.

(11) Falsification of records required to be kept by this Article or the rules and regulations of the Committee.

(12) Failure of a licensee or certified applicator to pay the original or renewal license or identification card fee when due and continuing to operate as a licensee or a certified applicator.

(13) Conviction of a felony or conviction of a violation of G.S. 106-65.28 within five years preceding the date of application for a license or a certified applicator's identification card or conviction of any said crimes while such license or card is in effect.

(b) Suspension of any license or certified applicator's identification card or registered technician's identification card under the provisions of this Article shall not be for less than 10 days nor more than two years, in the discretion of the Committee.

(c) If a license or certified applicator's identification card or registered technician's identification card is suspended or revoked under the provisions hereof, the licensee shall within five days of such suspension or revocation, surrender all licenses and identification cards issued thereunder to the Commissioner or his authorized representative.

(d) Any licensee whose license or certified applicator or operator whose identification card is revoked under the provisions of this Article shall not be eligible to apply for a new license or certified applicator's identification card or registered technician's identification card hereunder until two years have elapsed from the date of the order revoking said license or certified applicator's identification card or registered technician's identification card or if an appeal is taken from said order of revocation, two years from the date of the order or final judgment sustaining said revocation.

(e) The lapsing of a State structural pest control license or certified applicator's identification card or registered technician's identification card by operation of law or the voluntary surrender of said license or said card shall not deprive the Committee of jurisdiction to proceed with any investigation or disciplinary proceedings against such licensee or card holder or to render a decision suspending or revoking such license or card.

(f) The Committee may deny an application for a license, a certified applicator's identification card or a registered technician's identification card of any person whose license, certified applicator's identification card or equivalent thereto has been suspended or revoked in another state within two years prior to the application. (1955, c. 1017; 1967, c. 1184, s. 7; 1973, c. 556, ss. 7, 8; 1975, c. 19, s. 30; c. 570, ss. 8-13; 1977, c. 231, ss. 7-9; 1987, c. 827, s. 27; 1989, c. 725, s. 4.)

**Effect of Amendments.** —

The 1989 amendment, effective October 1, 1989, substituted "registered technician's" for "operator's" throughout the section; substituted "licensee or certified applicator" for "license holder [or] certified applicator" in subdivision (a)(3); rewrote subdivision (a)(6); deleted "registered" preceding "pesticide" in subdivision (a)(9); added subdivisions (a)(12) and (a)(13); and added subsection (f).

## § 106-65.29. Rules and regulations.

In order to ensure that persons licensed and certified under this Article are capable of performing a high quality of workmanship, the Committee is hereby authorized and empowered to make rules and regulations with respect to:

(1) The amount and kind of training required of an applicant for a license and certified applicator's card to engage in any one or more of the three phases of structural pest control, and the amount and kind of training required of an applicant for a registered technician's identification card.

(2) The type, frequency and passing score of any examination given an applicant for a license and certified applicator's card under this Article.

(3) The amount, kind and frequency of continuing education required of a licensee and certified applicator.

(4) The methods and materials to be used in performing any work authorized by the issuance of a license and certified applicator's card under this Article.

(5) The business records to be made and maintained by licensees and certified applicators under this Article necessary for the Committee to determine whether the licensee and certified applicator is performing a high quality of workmanship.

(6) The credentials and identification required of licensees and certified applicators, their employees and equipment, including service vehicles, when engaged in any work defined under this Article.

(7) Safety methods and procedures for structural pest control work.

(8) Fees for reinspection following a finding of a deviation, as defined by the Committee.

(9) Fees for training materials provided by the Committee or the Division. Such fees may be placed in a revolving fund to be used for training and continuing education purposes and shall not revert to the General Fund.

(10) The policies and programs set forth in this Article. (1955, c. 1017; 1967, c. 1184, s. 8; 1975, c. 570, s. 14; 1977, c. 231, s. 9; 1981, c. 495, s. 3; 1987, c. 368, s. 2; c. 827, s. 28; 1989, c. 725, s. 5.)

**Effect of Amendments.** — The 1989 amendment, effective October 1, 1989, substituted "a registered technician's" for "an operator's" in subdivision (1); substituted "deviation" for "discrepancy" in subdivision (8); and added subdivision (10).

## § 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.

For the enforcement of the provisions of this Article the Commissioner is authorized to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this Article. The inspectors shall be known as "structural pest control inspectors." The Commissioner shall enforce compliance with the provisions of this Article by making or causing to be made periodical and unannounced inspections of work done by licensees and certified applicators under this Article who engage in or supervise any one or more phases of structural pest control as defined in G.S. 106-65.25. The Commissioner shall cause the prompt and diligent investigation of all reports of violations of the provisions of this Article and all rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by a representative of the Commissioner of any property without first securing the permission of the owner or occupant thereof.

Prior to the issuance or renewal of a license or certified applicator's identification card, every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Commissioner or his authorized agent a resident agent upon whom service of notice or process may be made to enforce the provisions of this Article and rules and regulations adopted pursuant to the provisions hereof or any civil or criminal liabilities arising hereunder.

The Commissioner shall have authority to appoint personnel of the Structural Pest Control Division as special inspectors and said special inspectors are hereby vested with the authority to arrest with a warrant, or to arrest without a warrant when a violation of this Article is being committed in their presence or they have reasonable grounds to believe that a violation of this Article is being committed in their presence. Said special inspectors shall take offenders before the several courts of this State for prosecution or other proceedings. The provisions of this section do not apply to any person holding a valid structural pest control license, or a certified applicator's identification card, or a registered technician's identification card as issued under the provisions of this Article. Special inspectors shall not be entitled to the benefits of the Law Enforcement Officers' Benefit and Retirement Fund or the benefits of the Law Enforcement Officers' and Others Death Benefit Act as provided for in Articles 12 and 12A of Chapter 143 of the General Statutes, respectively. (1955, c. 1017; 1967, c. 1184, s. 9; 1973, c. 556, s. 9; 1975, c. 570, s. 15; 1977, c. 231, s. 10; 1989, c. 725, s. 6.)

**Editor's Note.** — Article 12 of Chapter 143, referred to in this section, was repealed by Session Laws 1985, c. 479, s. 196(t). See now Articles 12E and 12F of Chapter 143.

**Effect of Amendments.** — The 1989 amendment, effective October 1, 1989, substituted "a registered technician's" for "an operator's" in the next to the last sentence of the last paragraph.

## § 106-65.31. Annual certified applicator card and license fee; registration of servicemen, salesmen, solicitors, and estimators; identification cards.

(a) Certified Applicator's Identification Card. — The fee for issuance or renewal of a certified applicator's identification card shall be thirty dollars ($30.00). Within 75 days after the employment of a certified applicator, the licensee shall apply to the Division for the issuance of a certified applicator's identification card. A certified applicator's identification card shall expire on June 30 of each year and shall be renewed annually. All certified applicators who fail or neglect to renew their card on or before June 30 but make application before January 1 of the following year may have their card renewed without having to be reexamined unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(d)(3). All applicants submitting applications for the renewal of their cards after June 30 shall not use or supervise the use of restricted use pesticides until a new card has been issued.

Any certified applicator whose employment is terminated with a licensee or agent prior to the end of any license year may at any time prior to the end of the license year be reissued a certified applicator's identification card for the remainder of the license year as an employee of another licensee or agency or as an individual for a fee of five dollars ($5.00). The licensee shall notify the Division of the termination or change in status of any certified applicator.

Any certified applicator whose identification card is lost or destroyed or changed in any way may be reissued a new card for the remainder of the license year for a fee of five dollars ($5.00).

(b) License. — The fee for the issuance or renewal of a license for any one phase of structural pest control shall be one hundred twenty-five dollars ($125.00). Each additional phase shall be fifty dollars ($50.00). The fee for each subphase shall be ten dollars ($10.00). Licenses shall expire on June 30 of each year and shall be renewed annually. All licensees who fail or neglect to renew their license on or before June 30, but who make application before January 1 of the following year, may have their license renewed without having to be reexamined, unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(d)(3). No structural pest control work may be performed until the license has been renewed or until a new license has been issued.

Any licensee whose employment is terminated by his employer or any licensee who is transferred to another company or location other than the company or location shown on his license certificate, may at any time, have his license reissued for the remainder of the license year for a fee of ten dollars ($10.00).

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of ten dollars ($10.00).

(b1) Registration. — Within 75 days after the hiring of an employee who is either an estimator, salesman, serviceman, or solicitor, the licensee shall apply to the Division for the issuance of an identification card for such employee. The application must be accompanied by a fee of twenty-five dollars ($25.00) for each card. The card shall be issued in the name of the employee and shall bear the name of the employing licensee, the employer's license number and phases, the name and address of the employer's business, and such other information as the Committee may specify. The identification card shall be carried by the employee on his person at all times while performing any phase of structural pest control work. The card must be displayed upon demand by the Commissioner, the Committee, the Division, or any representative thereof, or the person for whom any phase of structural pest control work is being performed. A registered technician's identification card must be renewed annually on or before June 30 by payment of a renewal fee of twenty-five dollars ($25.00). If a card is lost or destroyed the licensee may secure a duplicate for a fee of five dollars ($5.00).The licensee shall notify the Division of the termination or change in status of any registered technician. All identification cards expire when a license expires.

When a license is reissued, the licensee shall be responsible for registering and securing identification cards for all existing employees who engage in structural pest control within 10 days of the reissuance of the license.

A certified applicator who is not an employee of a licensed individual shall register the names of all employees under his supervision who are engaged in the performance of structural pest control with the Division and shall purchase a registered technician's identification card for each such employee.

(b2) No person shall act as an estimator, serviceman, salesman, solicitor, or agent for any licensee under this Article nor shall any such person be issued an identification card by the Committee who has within three years of the date of application for an identification card been convicted of, plead guilty or nolo contendere, or forfeited bond in any State or federal court for a felony or any violation of the North Carolina Structural Pest Control Act or any regulation promulgated by the Committee. This provision shall not apply to any person whose citizenship has been restored as provided by law.

(b3) No person or business shall advertise as a contractor for structural pest control services nor actually contract for such services unless that person or business advertises or contracts in the name of the company shown on the license certificate of the licensee or identification card of the certified applicator who will perform the services.

(c) Notwithstanding any other provision of this law, the Committee may adopt rules to provide for the issuance of licenses, certified applicator's cards, and registered technician's identification cards with staggered expiration dates and may prorate renewal fees on a monthly basis to implement such rules. (1955, c. 1017; 1957, c. 1243, s. 4; 1967, c. 1184, s. 10; 1973, c. 47, s. 2; c. 556, s. 10; 1975, c. 570, s. 16; 1981, c. 495, s. 2; 1987, c. 368, s. 3; 1989, c. 544, s. 16; c. 725, s. 7; 1991, c. 636, s. 7.)

**Editor's Note.** — Session Laws 1989, c. 544, which amended this section, provided in s. 23: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

**Effect of Amendments.** —

Session Laws 1989, c. 544, s. 16, effective July 1, 1989, in subsection (a) substituted "(G.S. 106-65.27(d)(3))" for "(G.S. 106-65.27(e)(2))" in the second sentence, and substituted "ten dollars ($10.00)" for "five dollars ($5.00)" in the third sentence; in subsection (b) in the first paragraph substituted "one hundred twenty-five dollars ($125.00)" for "one hundred dollars ($100.00)" in the first sentence, and substituted "fifteen dollars ($15.00)" for "ten dollars ($10.00)" in the last sentence, substituted "ten dollars ($10.00)" for "five dollars ($5.00)" in the second paragraph, and in the third paragraph substituted "twenty-five dollars ($25.00)" for "twenty dollars ($20.00)" in the first and fourth sentences.

Session Laws 1989, c. 725, s. 7, effective October 1, 1989, rewrote this section, as amended by Session Laws 1989, c. 544, s. 16.

The 1991 amendment, effective July 11, 1991, substituted "G.S. 106-65.27(d)(3)" for "G.S. 106-65.27(e)(3)" in subsections (a) and (b).

## § 106-65.33. (Effective October 1, 1994 — See editor's note) Violation of Article, falsification of records, or misuse of registered pesticide a misdemeanor.

Any person who shall be adjudged to have violated any provision of this Article or who falsifies any records required to be kept by this Article or by the rules and regulations pursuant to this Article or who uses a registered pesticide in a manner inconsistent with its labeling shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Committee, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties. (1955, c. 1017; 1957, c. 1243, s. 6; 1967, c. 1184, s. 12; 1977, c. 231, s. 11; 1993, c. 539, s. 740; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence substituted "Class 2 misdemeanor" for "misdemeanor, and for each violation shall be liable for a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or shall be imprisoned for not more than 60 days nor more than six months, or both".

## § 106-65.41. Civil penalties.

A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Committee against any person for any one or more of the causes set forth in G.S. 106-65.28(a)(1) through (12). In determining the amount of any penalty, the Committee shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given an opportunity for a hearing pursuant to Chapter 150B of the General Statutes. Assessments may be collected, following judicial review, if any, of the Committee's final decision imposing the assessment, in any lawful manner for the collection of a debt. (1987, c. 368, s. 1; 1989, c. 725, s. 8.)

**Effect of Amendments.** — The 1989 amendment, effective October 1, 1989, substituted "G.S. 106-65.28(a)(1) through (12)" for "G.S. 106-65.28(a)(1) through (11)" in the first sentence.

## ARTICLE 4D.

## *North Carolina Biological Organism Act.*

### § 106-65.48. (Effective October 1, 1994 — See editor's note) Criminal penalties; violation of law or regulations.

If anyone shall interfere with or attempt to interfere with the Commissioner or any of his agents, while engaged in the performance of his duties under this Article, or shall violate any provision of this Article or any regulation of the Board of Agriculture adopted pursuant to this Article, he shall be guilty of a Class 3 misdemeanor. Each day's violation shall constitute a separate offense. (1973, c. 713, s. 7; 1993, c. 539, s. 741; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence substituted "Class 3 misdemeanor" for "misdemeanor and shall be fined not less than fifty dollars ($50.00) nor more than two hundred fifty dollars ($250.00), or imprisoned for not less than ten nor more than 30 days, for each offense".

## ARTICLE 4F.

## *Uniform Boll Weevil Eradication Act.*

### § 106-65.78. (Effective October 1, 1994 — See editor's note) Penalties.

(a) Any person who shall violate any of the provisions of this Article or the regulations promulgated hereunder, or who shall alter, forge or counterfeit, or use without authority, any certificate or permit or other document provided for in this Article or in the regulations promulgated hereunder, shall be guilty of a Class 1 misdemeanor.

(b) Any person who shall, except in compliance with the regulations of the Commissioner, move any regulated article into this State from any other state which the Commissioner found in such regulations is infested by the boll weevil, shall be guilty of a Class 1 misdemeanor. (1975, c. 958, s. 12; 1993, c. 539, s. 742; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (a) substituted "Class 1 misdemeanor" for "misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000) or by imprisonment not exceeding one year, or both, in the discretion of the court"; and in subsection (b) substituted "Class 1 misdemeanor" for "misdemeanor and shall be subject to the penalties provided in subsection (a) hereof".

## ARTICLE 8A.

## *Sale of Agricultural Liming Materials and Landplaster.*

### § 106-92.6. Prohibited acts.

(a) Agricultural liming material or landplaster shall not be sold or offered for sale or distributed in this State unless it complies with provisions of this law or regulations.

(b) Agricultural liming material or landplaster shall not be sold or offered for sale in this State which contains toxic materials in quantities injurious to plants or animals.

(c) It is unlawful to make any false or misleading statement or representation with regard to any agricultural liming material or landplaster product offered for sale, sold, or distributed in this State, or to use any misleading or deceptive trademark or brand name in connection therewith. The Commissioner may refuse, suspend, revoke, or terminate the registration of any such product for any violation of this section. (1979, c. 590; 1993, c. 144, s. 2.)

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1993, added subsection (c).

### § 106-92.7. Registration of brands.

(a) Each separately identified product shall be registered before being sold, offered for sale, or distributed in this State. Registration fee shall be twenty-five dollars ($25.00) for each separately identified product in packages of 10 pounds or less. For each other separately identified product registration fee shall be five dollars ($5.00). The application for registration shall be submitted to the Commissioner on forms furnished by the Commissioner and shall be accompanied by the appropriate registration fee. Upon approval by the Commissioner, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 of each year.

(b) A distributor shall not be required to register any brand of agricultural liming material or landplaster which is already registered under this Article by another person, providing the label does not differ in any respect.

(c) In determining the acceptability of any product for registration, the Commissioner may require proof of claims made for the product. If no specific claims are made, the Commissioner may require proof of usefulness and value of the product. As evidence of proof, the Commissioner may rely on experimental data furnished by the applicant and may require that the data be developed by a recognized research or experimental institution. The Commissioner may further require that the data be developed from tests conducted under conditions identical to or closely related to those present in North Carolina. The Commissioner may reject any data not developed under those conditions and may rely on advice from sources such as the Cooperative Extension Service of North Carolina State University. (1979, c. 590; 1993, c. 144, s. 1.)

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1993, added subsection (c).

## § 106-92.12. "Stop sale" orders.

The Commissioner may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of agricultural liming material or landplaster at a designated place when the Commissioner finds said material is being offered or exposed for sale in violation of any of the provisions of this Article until the law has been complied with and said violation has been otherwise legally disposed of by written authority. The Commissioner shall release the agricultural liming materials or landplaster so withdrawn, when the requirements of the provisions of this Article have been complied with and all costs and expense incurred in connection with the withdrawal have been paid.

If a manufacturer or registrant fails to make a refund as required by G.S. 106-92.11, the Commissioner may stop the sale of any agricultural liming materials or landplaster registered by the manufacturer or registrant and offered for sale in this State. (1979, c. 590; 1993, c. 144, s. 3.)

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1993, added the second paragraph.

## § 106-92.14. (Effective October 1, 1994 — See editor's note) Penalties for violations of this Article.

Any person convicted of violating any provision of this Article or the rules and regulations promulgated thereunder shall be guilty of a Class 3 misdemeanor and fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000) in the discretion of the court. Nothing in this Article shall be construed as requiring the Commissioner or his authorized agent to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the Article when he believes that the public interest will best be served by a suitable written warning. (1979, c. 590; 1993, c. 539, s. 743; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence inserted "Class 3" preceding "misdemeanor".

## ARTICLE 12.

## *Food, Drugs and Cosmetics.*

### § 106-121. Definitions and general consideration.

For the purpose of this Article:

(1) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(1a) The term "color" includes black, white, and intermediate grays.

(1b) The term "color additive" means a material which:

a. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

b. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto;

Provided, that such term does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(2) The term "Commissioner" means the Commissioner of Agriculture; the term "Department" means the Department of Agriculture, and the term "Board" means the Board of Agriculture.

(2a) The term "consumer commodity" except as otherwise specifically provided by this subdivision means any food, drug, device, or cosmetic as those terms are defined by this Article. Such term does not include:

a. Any tobacco or tobacco product; or

b. Any commodity subject to packaging or labeling requirements imposed under the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157) commonly known as the Virus-Serum Toxin Act; or

c. Any drug subject to the provisions of G.S. 106-134(13) or 106-134.1 of this Article or section 503(b)(1) or 506 of the federal act; or

d. Any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or
e. Any commodity subject to the provisions of the North Carolina Seed Law, Article 31, Chapter 106 of the General Statutes of North Carolina.

(3) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(4) The term "cosmetic" means
a. Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and
b. Articles intended for use as a component of any such articles, except that such terms shall not include soap.

(4a) The term "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer or distributor.

(5) The term "device," except when used in subdivision (15) of this section and in G.S. 106-122, subdivision (10), 106-130, subdivision (6), 106-134, subdivision (3) and 106-137, subdivision (3) means instruments, apparatus and contrivances, including their components, parts and accessories, intended
a. For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
b. To affect the structure or any function of the body of man or other animals.

(6) The term "drug" means
a. Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and
b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
c. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and
d. Articles intended for use as a component of any article specified in paragraphs a, b or c; but does not include devices or their components, parts, or accessories.

(7) The term "federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

(8) The term "food" means

a. Articles used for food or drink for man or other animals,
b. Chewing gum, and
c. Articles used for components of any such article.

(8a) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use) if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:
a. A pesticide chemical in or on a raw agricultural commodity; or
b. A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or
c. A color additive; or
d. Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(9) The term "immediate container" does not include package liners.

(10) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Article that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(11) The term "labeling" means all labels and other written, printed, or graphic matter
a. Upon an article or any of its containers or wrappers, or
b. Accompanying such article.

(11a) Repealed by Session Laws 1989, c. 226, s. 1, effective June 5, 1989.

(12) The term "new drug" means
a. Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

b. Any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.

(12a) Repealed by Session Laws 1989, c. 226, s. 1, effective June 5, 1989.

(13) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(13a) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include:

a. Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

b. Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

(14) The term "person" includes individual, partnership, corporation, and association.

(14a) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 et seq.), and which is used in the production, storage, or transportation of raw agricultural commodities.

(14b) The term "practitioner" means a physician, dentist, veterinarian or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a drug so long as such activity is within the normal course of professional practice or research.

(14c) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(14d) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(14e), (14f) Repealed by Session Laws 1989, c. 226, s. 1, effective June 5, 1989.

(15) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining

whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(16) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(17) The provisions of this Article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment. (1939, c. 320, s. 2; 1975, c. 614, ss. 1, 2; 1987, c. 737, s. 1; 1989, c. 226, s. 1.)

**Effect of Amendments.** — The 1989 amendment, effective June 5, 1989, substituted "appearing" for "appear" in subdivision (10), repealed former subdivision (11a), which defined the term "manufacturer;"' repealed former subdivision (12a), which defined the term "prescription drug;" repealed former subdivision (14e), which defined the term "repackager;" and repealed former subdivision (14f), which defined the term "wholesaler."

## § 106-122. Certain acts prohibited.

### CASE NOTES

**Cited** in Goodman v. Wenco Mgt., 100 N.C. App. 108, 394 S.E.2d 832 (1990); Goodman v. Wenco Foods, Inc., 331 N.C. 1, 423 S.E.2d 444 (1992).

## § 106-124. Violations made misdemeanor.

(a) **(Effective October 1, 1994 — See editor's note)** Any person, firm or corporation violating any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, or his duly designated agent, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated G.S. 106-122, subdivision (1) or (3) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the State of North Carolina from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this Article, designating this article.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the Commissioner of Agriculture to furnish the Commissioner the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency residing in the State of North Carolina who caused him to disseminate such advertisement. (1939, c. 320, s. 5; 1975, c. 614, s. 6; 1993, c. 539, s. 744; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of subsection (a) substituted "Class 2 misdemeanor" for "misdemeanor, and for each violation shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000), or shall be imprisoned for not more than 60 days".

### CASE NOTES

**Cited** in Goodman v. Wenco Mgt., 100 N.C. App. 108, 394 S.E.2d 832 (1990); Goodman v. Wenco Foods, Inc., 331 N.C. 1, 423 S.E.2d 444 (1992).

## § 106-128. Establishment of reasonable standards of quality by Board of Agriculture.

### CASE NOTES

**Quoted** in Goodman v. Wenco Foods, Inc., 331 N.C. 1, 423 S.E.2d 444 (1992).

## § 106-129. Foods deemed to be adulterated.

### CASE NOTES

**Quoted** in Goodman v. Wenco Mgt., 100 N.C. App. 108, 394 S.E.2d 832 (1990).

**Cited** in Goodman v. Wenco Foods, Inc., 331 N.C. 1, 423 S.E.2d 444 (1992).

## § 106-140.1. Registration of producers of prescription drugs and devices.

(a) On or before December 31 of each year, every person doing business in North Carolina and operating as a wholesaler, manufacturer, or repackager, as those terms are defined in subsection (j) of this section, shall register with the Commissioner his name and business location(s) in North Carolina. If said person has no business locations in North Carolina, he shall register his name and location of his corporate offices.

(b) Every person, upon first operating as a wholesaler, manufacturer or repackager in North Carolina shall immediately register with the Commissioner his name, place of business, and such establishment. If said person has no business locations in North Carolina, he shall register his name and location of his corporate offices.

(c) Every person duly registered in accordance with subsections (a) and (b) of this section shall register with the Commissioner any additional establishment that he owns or operates in the State of North Carolina prior to doing business as a manufacturer, wholesaler or repackager.

(d) The Commissioner may assign a registration number to any person or any establishment registered in accordance with this section.

(e) The Commissioner shall make available for inspection to any person so requesting any registration filed pursuant to this section.

(f) The following classes of people are exempt from the registration requirements of this section:

(1) Pharmacists as defined in G.S. 90-85.3(q) holding a valid permit as defined in G.S. 90-85.3(m);

(2) Practitioners licensed or registered by law to prescribe or administer drugs and who manufacture, prepare, compound, or process drugs or devices solely for use in the course of their professional practice.

(3) Persons who manufacture, prepare, compound, or process drugs solely for use in research, teaching, or chemical analysis and not for sale.

(4) Other classes of persons the Commissioner may by rule exempt from the application of this section upon a finding that registration by these classes of persons in accordance with this section is not necessary for the protection of the public health.

(5) Wholesale distributors of prescription drugs licensed under G.S. 106-145.3.

(g) Every establishment in the State of North Carolina registered with the Commissioner pursuant to this section shall be subject to inspection pursuant to G.S. 106-140.

(h) The Commissioner shall adopt rules to implement the registration requirements of this section. These rules may provide for an annual registration fee of up to five hundred dollars ($500.00) for companies operating as manufacturers, wholesalers, or repackagers. The Department of Agriculture shall use these funds for the implementation of the North Carolina Food, Drug and Cosmetic Act.

(i) For the purposes of this act, name means the name of the partnership if a partnership and the name of the corporation if a corporation.

(j) As used in this section:

(1) The term "manufacturer" means a person who prepares, derives, or produces a prescription drug. Pharmacists are specifically excluded from this definition if they are acting in the course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it.

(2) The term "prescription drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement: "Caution: Federal law prohibits dispensing without a prescription."

(3) The term "repackager" means a person who repacks, relabels, or manipulates a prescription drug which was in a unit packaged and sealed by a manufacturer. Pharmacists are specifically exempted from this definition if they are acting in the course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it.

(4) The term "wholesaler" means a person acting as a jobber, wholesale merchant, salvager, or broker, or agent thereof, who sells or distributes for resale a prescription drug. Pharmacists are specifically exempted from this definition if they are acting in the course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it. (1987, c. 737, s. 2; 1989, c. 226, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 20; 1991, c. 699, ss. 3, 4.)

**Effect of Amendments.** — The 1989 amendment, effective June 5, 1989, added subsection (j).

The 1989 (Reg. Sess., 1990) amendment, effective July 27, 1990, substituted "wholesaler, manufacturer, or repackager, as those terms are defined in subsection (j) of this section" for "wholesaler as defined in G.S. 106-121(14f) or manufacturer as defined in G.S. 106-121(11a) or repackager as defined in G.S. 106-121(14e)" in the first sentence of subsection (a).

The 1991 amendment, effective January 1, 1992, in subsection (h), substituted "adopt rules" for "issue regulations" in the first sentence, in the second sentence, substituted "These rules" for "These regulations", and substituted "five hundred dollars ($500.00)" for "one hundred dollars ($100.00)"; and in subsection (f), substituted "The following classes of people are exempt from the registration requirements of this section:" for "The foregoing subsections of this section shall not apply:" in the introductory language; deleted "To" preceding "pharmacists" in subdivision (1), deleted "To" preceding "practitioners" in subdivision (2), in subdivision (3), deleted "To" preceding "persons", and deleted "or" at the end of the subdivision, in subdivision (4), deleted "To such" preceding "other", deleted "as" preceding "the Commissioner", substituted "by rule" for "by regulation", and added subdivision (5).

## ARTICLE 12A.

## *Wholesale Prescription Drug Distributors.*

### § 106-145.1. Purpose and interpretation of Article.

This Article establishes a State licensing program for wholesale distributors to enable wholesale distributors to comply with federal law. This Article shall be construed to do only that required for compliance with 21 U.S.C. § 353(e) and 21 C.F.R. Part 205. This Article shall be interpreted to be consistent with 21 C.F.R. Part 205, Guidelines for State Licensing of Wholesale Prescription Drug Distributors. In the event of a conflict, the federal law controls. (1991, c. 699, s. 2.)

**Editor's Note.** — Session Laws 1991, c. 699, s. 5 made this Article effective January 1, 1992.

Session Laws 1991, c. 699, s. 1 provides: "This act shall be known as the 'Wholesale Drug Distributor Licensing Act of 1991.'"

### § 106-145.2. Definitions.

The following definitions apply in this Article:

(1) Blood. — Whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(2) Blood component. — That part of blood separated by physical or mechanical means.

(3) Commissioner. — The Commissioner of Agriculture.

(4) Common control. — The power to direct or cause the direction of the management and policies of a person, whether by ownership of stock, by voting rights, by contract, or otherwise.

(5) Department. — The Department of Agriculture.

(6) Drug sample. — A unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(7) Manufacturer. — A person who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling a prescription drug.

(8) Person. — An individual, a corporation, a partnership, or any other entity.

(9) Prescription drug. — A human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to 21 U.S.C. § 353(b).

(10) Wholesale distribution. — Distribution of a prescription drug to a person who is not a consumer or patient, other than any of the following types of distributions:

- a. Intracompany sales. An intracompany sale is a transaction or transfer between any divisions, subsidiary and parent companies, or affiliated companies under common control of the same corporate entity.
- b. The purchase or other acquisition of a prescription drug by a hospital or other health care entity that is a member of a group purchasing organization for its own use from the group purchasing organization or from other hospitals or other health care entities that are members of these organizations.

c. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code to a nonprofit affiliate of the organization to the extent otherwise permitted by law.

d. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities that are under common control.

e. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons. Emergency medical reasons include transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage when the gross dollar value of the transfers does not exceed five percent (5%) of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any 12-consecutive-month period.

f. The sale, purchase, or trade of a prescription drug; an offer to sell, purchase, or trade a prescription drug; or the dispensing of a prescription drug pursuant to a prescription.

g. The distribution of drug samples by a representative of a manufacturer or a wholesale distributor.

h. The sale, purchase, or trade of blood and blood components intended for transfusion.

(11) Wholesale distributor. — A person who is engaged in the wholesale distribution of prescription drugs. The term includes manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions. The term does not include a person who acquires prescription drugs commingled with other goods as part of a recovery operation and who disposes of such drugs under the supervision of the Department. A warehouse includes a warehouse of a manufacturer or wholesale distributor, a chain drug warehouse, and a wholesale drug warehouse. (1991, c. 699, s. 2.)

## § 106-145.3. Wholesale distributor must have license.

(a) Requirement. — Every wholesale distributor engaged in the wholesale distribution of prescription drugs in interstate commerce in this State shall obtain a license from the Commissioner for each location from which prescription drugs are distributed and shall renew each license annually. A license may cover multiple buildings and multiple operations at a single location, at the wholesale distributor's discretion. A license expires on December 31 of the year in which it is issued. A wholesale distributor licensed under this section is not required to register under G.S. 106-140.1. In lieu of licensing under this section, a wholesale distributor who has no facilities in this State may register under G.S. 106-140.1 if the wholesale distributor possesses a valid license granted by another state that has requirements substantially similar to this Article.

(b) Reciprocity. — The Commissioner may license an out-of-State wholesale distributor on the basis of reciprocity with another state when the following conditions apply:

(1) The out-of-State wholesale distributor possesses a valid license granted by another state pursuant to requirements substantially equivalent to the license requirements of this State.

(2) The other state extends reciprocal treatment under its own laws to wholesale distributors licensed in this State. (1991, c. 699, s. 2.)

## § 106-145.4. Application and fee for license.

(a) Application. — An application for a wholesale distributor license or for renewal of a wholesale distributor license shall be on a form prescribed by the Commissioner and shall include the following information:

(1) The name, full business address, and telephone number of the applicant.

(2) All trade or business names used by the applicant.

(3) Addresses, telephone numbers, and names of contact persons for all facilities used by the applicant for the storage, handling, and distribution of prescription drugs.

(4) The type of ownership or operation of the applicant, such as a partnership, a corporation, or a sole proprietorship.

(5) The name of each owner and operator of the applicant, including:

  a. If the applicant is an individual, the individual's name.

  b. If the applicant is a partnership, the name of each partner and the name of the partnership.

  c. If the applicant is a corporation, the name and title of each corporate officer and director, the corporate name of the corporation, and the state of incorporation.

  d. If the applicant is a sole proprietorship, the full name of the sole proprietor and the name of the business entity.

(6) Any other information required by the Commissioner to determine if the applicant is qualified to receive a license.

When a change occurs in any information listed in this subsection after a license is issued, the license holder shall report the change to the Commissioner within 90 days after the change.

(b) Fee. — An application for an initial license or a renewed license as a wholesale distributor shall be accompanied by a nonrefundable fee of five hundred dollars ($500.00) for a manufacturer or three hundred fifty dollars ($350.00) for any other person. (1991, c. 699, s. 2.)

**Editor's Note.** — Session Laws 1991, c. 699, s. 5, provides: "Notwithstanding G.S. 106-145.4, the Commissioner may issue a wholesale distributor license to an applicant who had a facility in this State on July 1, 1991, without inspecting the facility."

## § 106-145.5. Review of application and qualifications of applicant.

The Commissioner shall determine whether to issue or deny a wholesale distributor license within 90 days after an applicant files an application for a license with the Commissioner. In reviewing an application, the Commissioner shall consider the factors listed in this subsection. In the case of a partnership or corporation, the Commissioner shall consider the factors as applied to each individual whose name is required to be included in the license application.

The factors to be considered are:

(1) Any convictions of the applicant under any federal, state, or local law relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances.
(2) Any felony convictions of the applicant under federal, state, or local law.
(3) The applicant's past experience in the manufacture or distribution of controlled substances and other prescription drugs.
(4) Whether the applicant has previously given any false or fraudulent information in an application made in connection with drug manufacturing or distribution.
(5) Suspension or revocation by the federal government or a state or local government of any license currently or previously held by the applicant for the manufacture or distribution of any controlled substances or other prescription drugs.
(6) Compliance with the licensing requirements under any previously granted license.
(7) Compliance with the requirements to maintain or make available to the Commissioner or to a federal, state, or local law enforcement official those records required under G.S. 106-145.8.
(8) Whether the applicant requires employees of the applicant who are involved in any prescription drug wholesale distribution activity to have education, training, experience, or any combination of these factors sufficient to enable the employee to perform assigned functions in a manner that ensures that prescription drug quality, safety, and security will be maintained at all times as required by law.
(9) Any other factors or qualifications the Commissioner considers relevant to and consistent with the public health and safety.

The Commissioner shall inspect the facility of an applicant at which prescription drugs will be stored, handled, or distributed before issuing the applicant a license. (1991, c. 699, s. 2.)

## § 106-145.6. Denial, revocation, and suspension of license; penalties for violations.

(a) Adverse Action. — The Commissioner may deny a license to an applicant if the Commissioner determines that granting the applicant a license would not be in the public interest. Public interest considerations shall be limited to factors and qualifications that are directly related to the protection of public health and safety. The Commissioner may deny, suspend, or revoke a license for substantial or repeated violations of this Article or for conviction of a violation of any other federal, state, or local prescription drug law or regulation. Chapter 150B of the General Statutes governs the denial, suspension, or revocation of a license under this Article.

(b) **(Effective October 1, 1994 — See editor's note)** Criminal Sanctions. — It is unlawful to engage in wholesale distribution in this State without a wholesale distributor license or to violate any other provision of this Article. A person who violates this Article commits a Class H felony. A fine imposed for a violation of this Article may not exceed two hundred fifty thousand dollars ($250,000).

(c) Civil Penalty. — The Commissioner may assess a civil penalty of not more than ten thousand dollars ($10,000) against a person who violates any provision of this Article. In determining the amount of a civil penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. Chapter 150B of the General Statutes governs the assessment of a civil penalty under this subsection. If a civil penalty is not paid within 30 days after the completion of judicial review of a final agency decision by the Commissioner, the penalty may be collected in any manner by which a debt may be collected. Penalties collected shall be credited to the General Fund. (1991, c. 699, s. 2; 1993, c. 539, s. 1294; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, deleted "and is punishable in accordance with G.S. 14-1.1" at the end of the second sentence of subsection (b).

## § 106-145.7. Storage, handling, and records of prescription drugs.

(a) Facilities. — All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed for wholesale distribution shall meet the following requirements:

(1) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations.

(2) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions.

(3) Have a quarantine area for the storage of prescription drugs that are outdated, damaged, deteriorated, mis-

branded, or adulterated, or that are in immediate or sealed secondary containers that have been opened.

(4) Be maintained in a clean and orderly condition.

(5) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(b) Security. — All facilities used for wholesale distribution shall be secure from unauthorized entry. Access from outside the premises shall be kept to a minimum and be well-controlled. The outside perimeter of the premises shall be well-lighted. Entry into areas where prescription drugs are held shall be limited to authorized personnel. The facilities shall be equipped with the following:

(1) An alarm system to detect entry after hours.

(2) A security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(c) Storage. — All prescription drugs for wholesale distribution shall be stored at appropriate temperatures and under appropriate conditions in accordance with any requirements stated in the labeling of the prescription drugs or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF). If the labeling of a prescription drug or a compendium do not establish storage requirements for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(d) Examination of Materials. — A wholesale distributor shall visually examine each outside shipping container upon receipt for identity and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. The examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents. A wholesale distributor shall carefully inspect each outgoing shipment for identity of the prescription drugs and to ensure that no prescription drugs that have been damaged in storage or held under improper conditions are delivered.

(e) Returned, Damaged, and Outdated Prescription Drugs. — A wholesale distributor shall quarantine and physically separate prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated from other prescription drugs until their destruction or their return to their supplier. A prescription drug whose immediate or sealed outer or sealed secondary container has been opened or used shall be identified as having been opened or used and shall be treated in the same manner as outdated prescription drugs.

If the conditions under which a prescription drug has been returned to a wholesale distributor cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be destroyed or returned to its supplier unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling as a result of storage or shipping. (1991, c. 699, s. 2.)

## § 106-145.8. Records of prescription drugs.

(a) Records. — A wholesale distributor shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs, including all stored prescription drugs, all incoming and outgoing prescription drugs, and all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs. A wholesale distributor is not required, however, to keep a record of the lot number or expiration date of a prescription drug disposed of or distributed by the distributor.

A record of a prescription drug shall include all of the following information:

(1) The source of the prescription drug, including the name and principal address of the seller or transferor and the address of the location from which the drug was shipped.
(2) The identity and quantity of the prescription drug received and distributed or disposed of through another method.
(3) The date the wholesale distributor received the prescription drug and the date the wholesale distributor distributed or otherwise disposed of the drug.
(4) Documentation of the proper storage of prescription drugs. Documentation may be by manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs.

A wholesale distributor shall keep a record of a prescription drug for two years after its disposition.

(b) Inspection. — A wholesale distributor shall make inventories and records of prescription drugs available for inspection and photocopying by representatives of the Department or authorized federal, State, or local law enforcement officials. A wholesale drug distributor shall permit the Department or an authorized federal, State, or local law enforcement official to enter and inspect the distributor's premises and delivery vehicles and to audit the distributor's records and written operating procedures at reasonable times and in a reasonable manner.

A record that is kept at the inspection site or is immediately retrievable by computer or other electronic means shall be readily available for authorized inspection during the two-year retention period. A record kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized official of a federal, State, or local law enforcement agency. (1991, c. 699, s. 2.)

## § 106-145.9. Written procedures concerning prescription drugs and lists of responsible persons.

(a) Procedures. — A wholesale distributor shall establish, maintain, and adhere to written procedures for the receipt, security, storage, inventory, and distribution of prescription drugs. These shall include all of the following:

(1) A procedure for identifying, recording, and reporting a loss or theft of a prescription drug.
(2) A procedure for correcting all errors and inaccuracies in inventories of prescription drugs.
(3) A procedure whereby the oldest approved stock of a prescription drug is distributed first. The procedure may permit deviation from this requirement, if the deviation is temporary and appropriate.
(4) A procedure for handling recalls and withdrawals of prescription drugs that adequately addresses recalls and withdrawals due to any of the following:
    a. An action initiated at the request of the Food and Drug Administration or other federal, State, or local law enforcement or other governmental agency, including the Department.
    b. Any voluntary action by the manufacturer to remove defective or potentially defective prescription drugs from the market.
    c. Any action undertaken to promote public health and safety by replacing existing prescription drugs with an improved product or new package design.
(5) A procedure to ensure that the wholesale distributor prepares for, protects against, and handles any crisis that affects security or operation of any facility in the event of a strike, a fire, flood, or other natural disaster, or another emergency.
(6) A procedure to ensure that any outdated prescription drugs are segregated from other prescription drugs and either returned to the manufacturer or destroyed.

(b) Responsible Persons. — A wholesale distributor shall establish and maintain lists of officers, directors, managers, and other persons in charge of the distribution, storage, or handling of prescription drugs. The lists shall include a description of the duties of those on the list and a summary of their qualifications. (1991, c. 699, s. 2.)

## § 106-145.10. Application of other laws.

A wholesale drug distributor shall comply with applicable federal, State, and local laws and regulations. A wholesale distributor that deals in controlled substances shall register with the federal Drug Enforcement Administration (DEA) and shall comply with all applicable federal, State, and local laws and regulations. A wholesale drug distributor is subject to any applicable federal, State, or local laws or regulations that relate to prescription drug salvaging or reprocessing. (1991, c. 699, s. 2.)

### § 106-145.11. Wholesale Distributor Advisory Committee.

(a) Organization. — The Wholesale Distributor Advisory Committee is created in the Department. The Committee shall consist of five members appointed by the Commissioner as follows:

(1) Two members shall be representatives of wholesale distributors.
(2) One member shall be a representative of a manufacturer.
(3) One member shall be a representative of practicing pharmacists.
(4) One member shall be a representative of the consuming public not included in the three categories above.

The Committee shall elect a chair and other officers it finds necessary. The committee shall meet at the call of the chair or upon written notice to all Committee members signed by at least three members. A majority of the Committee is a quorum for the purpose of conducting business. The Department shall provide administrative and clerical support services to the Committee. Members shall be entitled to per diem and reimbursement of expenses as provided in Chapter 138 of the General Statutes.

(b) Duties. — The Committee shall do the following:

(1) Review all rules to implement this Article that are proposed for adoption by the Commissioner.
(2) Advise the Commissioner on the implementation and enforcement of this Article. (1991, c. 699, s. 2.)

### § 106-145.12. Enforcement and implementation of Article.

The Commissioner shall enforce this Article by using employees of the Department. The Commissioner may enter into agreements with federal, State, or local agencies to facilitate enforcement of this Article. The Commissioner may adopt rules to implement this Article. (1991, c. 699, s. 2.)

## ARTICLE 14A.

## *Licensing and Regulation of Rendering Plants and Rendering Operations.*

### § 106-168.5. Duties of Commissioner upon receipt of application; inspection committee.

Upon receipt of the application, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee," which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture, one member who shall be designated by the Secretary of Environment, Health, and Natural Resources and who shall be an employee of the Department of Environment, Health, and Natural Resources, and one member who shall be designated by the director of the North Carolina Division of the Southeastern Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member. (1953, c. 732; 1957, c. 1357, s. 13; 1973, c. 476, s. 128; 1989, c. 727, s. 219(31).)

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources" in two places in the first sentence.

## § 106-168.15. (Effective October 1, 1994 — See editor's note) Violation a misdemeanor.

Any person conducting rendering operations or collecting raw material in violation of the provisions of this Article shall be guilty of a Class 1 misdemeanor. (1953, c. 732; 1993, c. 539, s. 745; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, substituted "Class 1 misdemeanor" for "misdemeanor and shall, upon conviction, be punished in the discretion of the court."

## ARTICLE 17.

### *Marketing and Branding Farm Products.*

## § 106-185. Scope of Article; federal-State cooperation.

(a) Scope. — This Article gives the Department of Agriculture the authority to investigate marketing conditions for and establish and maintain standard grades, packages, and State brands for farm products. As used in this Article, the term "farm products" means farm crops, horticultural crops, and animal products.

(b) Cooperation. — The Commissioner of Agriculture may enter into agreements with the United States Department of Agriculture that require State and federal cooperation in performing the duties imposed by this Article. (1919, c. 325, s. 1; C.S., s. 4781; 1921, c. 140; 1993, c. 223, s. 1.)

**Effect of Amendments.** — The 1993 amendment, effective June 28, 1993, rewrote this section.

## § 106-189.2. Sale of immature apples.

(a) Notwithstanding any other provision of law, the Board of Agriculture shall adopt requirements for apple grade standards. The apple grade standards shall include the requirements for maturity of the United States standards for grades of apples and may employ the use of the refractometer to determine the sugar content and maturity of apples and the pressure test to determine the maturity of apples. All apples sold, offered for sale, or shipped into this State shall meet these requirements.

(b) **(Effective October 1, 1994 — See editor's note)** Any person, firm or corporation violating the provisions of this section shall be guilty of a Class 3 misdemeanor and shall be punished only by a fine of not less than one hundred dollars ($100.00). Each day on which apples are sold or offered for sale in violation of the provisions of this section shall constitute a separate violation. (1973, c. 973; 1985, c. 585; 1993, c. 539, s. 746; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of subsection (b) inserted "Class 3" preceding "misdemeanor"and inserted "only".

## § 106-190. Inspectors or graders authorized; revocation of license.

**Editor's Note.** — Session Laws 1993, c. 223, s. 3 provides that fees collected under this section and not expended as of July 1, 1993, shall be credited to the Farm Product Inspection Account established by G.S. 106-194.1.

## § 106-194.1. Farm Product Inspection Account.

The Farm Product Inspection Account is established as a nonreverting account within the Department of Agriculture. Interest and other investment income earned by the Account shall be credited to it.

Fees collected under this Article shall be credited to the Account and applied to the costs of administering this Article. Fees credited to the Account from grading and inspection services provided under a cooperative agreement with the United States Department of Agriculture are subject to any restrictions on use set out in the cooperative agreement. (1993, c. 223, s. 2.)

**Editor's Note.** — Session Laws 1993, c. 223, s. 3 made this section effective July 1, 1993.

Session Laws 1993, c. 223, which enacted this section, in s. 3 provides that fees collected under G.S. 106-190 and not expended as of July 1, 1993, shall be credited to the Farm Product Inspection Account established by this section.

### § 106-196. (Effective October 1, 1994 — See editor's note) Violation of Article or regulations a misdemeanor.

Any person who violates any provision of this Article, or of the rules and regulations made under the Article for carrying out its provisions, or fails or refuses to comply with any requirement thereof, or who wilfully interferes with agents or employees in the execution, or on account of the execution, of his or their duties, shall be guilty of a Class 3 misdemeanor. (1919, c. 325, ss. 13, 14; C.S., s. 4792; 1993, c. 539, s. 747; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence inserted "Class 3" preceding "misdemeanor" and deleted the second sentence which read "Any person convicted of a misdemeanor under this Article shall be punished by a fine of not more than one hundred dollars ($100.00), or by imprisonment in the county jail for not more than 30 days, or by both in the discretion of the court".

## ARTICLE 18.

## *Shipper's Name on Receptacles.*

### § 106-197. (Effective October 1, 1994 — See editor's note) Shipping fruit or vegetables not having grower's or shipper's name stamped on receptacle a misdemeanor.

Any person or persons, firm or corporation selling or offering for sale or consignment any barrel, crate, box, or other case, package or receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or produce of any kind whatsoever, to be shipped to any point within or without the State, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a Class 3 misdemeanor. This section shall not apply to railroads, express companies and other transportation companies selling or offering for sale for transportation or storage charges or any other charges accruing to said railroads, express companies or other transportation companies any barrel, crate, box, or other case, package or receptacle containing berries, fruit, melons, potatoes, vegetables, truck or produce. (1915, c. 193; C.S., s. 5087; 1993, c. 539, s. 748; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence substituted "Class 3 misdemeanor" for "misdemeanor and fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days".

## ARTICLE 19B.

## *Plant Protection and Conservation Act.*

### § 106-202.14. Creation of Board; membership; terms; chairman; quorum; board actions; compensation.

(a) The North Carolina Plant Conservation Board is created within the Department of Agriculture.

(b) The Board shall consist of seven members who are residents of North Carolina, one of whom represents each of the following:

(1) The North Carolina Botanical Garden of The University of North Carolina at Chapel Hill;

(2) The botanical, scientific community in North Carolina;

(3) The Division of Forest Resources, Department of Environment, Health, and Natural Resources;

(4) A North Carolina citizens conservation organization;

(5) The commercial plant production industry in North Carolina;

(6) The Department of Agriculture;

(7) The North Carolina public at large.

The Governor shall appoint the first four members enumerated above; the Commissioner shall appoint the remaining three members.

(c) Initial appointments to the Board shall be made by October 1, 1979. Of the terms of initial appointees, the representatives of the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill, the commercial plant production industry in North Carolina, and a North Carolina citizens conservation organization shall serve two-year terms; all other members shall serve four-year terms. All subsequent terms shall be for four-year terms.

(d) All members shall hold their offices until their successors are appointed and qualified. Any vacancy occurring in the membership of the Board prior to the expiration of the term shall be filled for the remainder of the unexpired term. The Commissioner may at any time remove any member from the Board for cause. Each appointment to fill a vacancy in the membership of the Board shall be of a person having the proper credentials for that vacancy and appointed by the proper appointing agency.

(e) The Board shall select its chairman from its own membership to serve for a term of two years. The chairman shall have a full vote. Any vacancy occurring in the chairmanship shall be filled by the Board for the remainder of the term. The Board may select other officers as it deems necessary.

(f) Any action of the Board shall require at least four concurring votes.

(g) Members of the Board who are not State employees shall receive per diem, subsistence and travel allowances authorized by G.S. 138-5; members who are State employees shall receive the subsistence and travel allowances authorized by G.S. 138-6; and members who are also members of the General Assembly shall receive subsistence and travel allowances authorized by G.S. 120-3.1. (1979, c. 964, s. 1; 1989, c. 727, s. 218(45).)

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in subdivision (b)(3).

## § 106-202.15. Powers and duties of the Board.

The Board shall have the following powers and duties:

(1) To adopt and publish by July 1, 1980, an endangered species list, a threatened species list and a list of species of special concern, as provided for in G.S. 106-202.16, identifying each entry by the common name and scientific name and cross-referencing by family, genus, and species number as found in the current edition of "The Manual of the Vascular Flora of the Carolinas," or if not found in this edition, as identified by the American Society of Plant Taxonomists;

(2) To reconsider and revise the lists from time to time in response to public proposals and as the Board deems necessary;

(3) To conserve and to regulate the collection and shipment of those plant species or higher taxa that are of such similarity to endangered and threatened species that they cannot be easily or readily distinguished from an endangered or threatened species;

(4) To regulate within the State any exotic species, in the same manner as a resident species if the exotic species is on the Federal Endangered and Threatened Species List or it is listed in the Appendices to the International Treaty to Conserve Endangered and Threatened Species;

(5) To determine that certain plant species growing in North Carolina, whether or not they are on the endangered or threatened species list, are of special concern and to limit, regulate or forbid sale or collection of these plants;

(6) To conduct investigations to determine whether a plant should be on the protected plant lists and the requirements for survival of resident species of plants;

(7) To adopt regulations to protect, conserve and enhance resident and exotic species of plants on the lists, or to otherwise affect the intent of this Article;

(8) To develop, establish and coordinate conservation programs for endangered species and threatened species of plants, consistent with the policies of the Endangered Species Act, including the acquisition of rights to land or aquatic habitats;

(9) To enter into and administer cooperative agreements through the Commissioner of Agriculture, in concert with the North Carolina Botanical Garden and other agencies, with the U.S. Department of Interior or other federal,

State or private organizations concerning endangered and threatened species of plants and their conservation and management;

(10) To cooperate or enter into formal agreements with any agency of any other state or of the federal government for the purpose of enforcing any of the provisions of this Article;

(11) Through the Commissioner, to receive funds, donations, grants or other moneys, issue grants, enter contracts, employ personnel and purchase supplies and materials necessary to fulfill its duties;

(12) To promulgate regulations under which the Department of Agriculture may issue permits to licensed nurserymen, commercial growers, scientific supply houses and botanical gardens for the sale or distribution of plants on the protected list provided that the plants are nursery propagated and grown horticulturally from seeds or by vegetative propagation of cuttings, meristems or other similar materials and that the plants bear the grower's permit number.

(13) To stop the sale of or to seize any endangered, threatened, or special concern plant species, or part thereof possessed, transported, or moved within this State or brought into this State from any place outside the State if such is found by the Board or its duly authorized agent to be in violation of this Article or rules adopted pursuant to this Article. Such plants shall be moved or disposed of at the direction of the Board or its agent or by court order. (1979, c. 964, s. 1; 1989, c. 508, s. 1.)

**Editor's Note.** — Session Laws 1989, c. 508, which added subdivision (13), provided in s. 5: "This act shall become effective October 1, 1989. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1989 amendment, effective October 1, 1989, added subdivision (13).

## § 106-202.17. Creation of committee; membership; terms; chairman; meetings; committee action; quorum; compensation.

(a) The North Carolina Plant Conservation Scientific Committee is created within the Department of Agriculture.

(b) The Scientific Committee shall consist of the Directors of The University of North Carolina at Chapel Hill Herbarium, the North Carolina State University Herbarium, the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill, the North Carolina State Museum of Natural Sciences and the North Carolina Natural Heritage Program of the Department of Environment, Health, and Natural Resources or their designees, a representative of the North Carolina Association of Nurserymen, Inc., appointed by the Commissioner, and a representative of the Garden Club of North Carolina, Incorporated, the North Carolina Chapter of the Nature Conservancy or the North Carolina Wild Flower Preservation Society, Inc., appointed by the Commissioner. Members shall serve for three-year terms and may succeed themselves.

(c) The Board shall select a chairman of the Scientific Committee from the Scientific Committee's membership to serve for three years.

(d) The Scientific Committee may hold its meetings at the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill.

(e) Any action of the Scientific Committee shall require at least four concurring votes.

(f) Members of the Scientific Committee who are not State employees may receive per diem, subsistence and travel allowances authorized by G.S. 138-5 if they so request; members who are State employees may receive the subsistence and travel allowances authorized by G.S. 138-6 if they so request; and members who are also members of the General Assembly may receive subsistence and travel allowances authorized by G.S. 120-3.1 if they so request. (1979, c. 964, s. 1; 1989, c. 727, s. 218(46); 1993, c. 561, s. 116(i).)

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the first sentence of subsection (b).

The 1993 amendment, effective August 1, 1993, substituted "North Carolina State Museum of Natural Sciences" for "North Carolina Museum of Natural History" in subsection (b).

## § 106-202.19. Unlawful acts; penalties; enforcement.

(a) It is unlawful:

(1) To uproot, dig, take or otherwise disturb or remove for any purpose from the lands of another, any plant on a protected plant list without a written permit from the owner which is dated and valid for no more than 180 days and which indicates the species or higher taxon of plants for which permission is granted; except that the incidental disturbance of protected plants during agricultural, forestry or development operations is not illegal so long as the plants are not collected for sale or commercial use;

(2) To sell, barter, trade, exchange, export, offer for sale, barter, trade, exchange or export or give away for any purpose including advertising or other promotional purpose any plant on a protected plant list, except as authorized according to the rules and regulations of the Board;

(3) To violate any rule of the Board promulgated under this Article;

(4) To dig ginseng on another person's land, except for the purpose of replanting, between the first day of April and the first day of September;

(5) To buy ginseng outside of a buying season as provided by the Board without obtaining the required documents from the person selling the ginseng;

(6) To buy ginseng for the purpose of resale or trade without holding a currently valid permit as a ginseng dealer;

(7) To fail to keep records as required under this Article, to refuse to make records available for inspection by the Board or its agent, or to use forms other than those pro-

vided for the current year or harvest season by the Department of Agriculture;

(8) To provide false information on any record or form required under this Article;

(9) To make false statements or provide false information in connection with any investigation conducted under this Article;

(10) To possess any protected plant, or part thereof, which was obtained in violation of this Article or any rule adopted hereunder; or

(11) To violate a stop sale order issued by the Board or its agent.

(a1) **(Effective October 1, 1994 — See editor's note)** Any person convicted of violating this Article, or any rule of the Board adopted pursuant to this Article shall be guilty of a Class 3 misdemeanor, and for a first violation shall only be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00); and upon a subsequent conviction shall only be fined not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000). Each illegal movement or distribution of a protected plant shall constitute a separate violation. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Board, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(a2) A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person guilty of violating this Article a second or subsequent time.

(b) The Commissioner or any employee of the Department of Agriculture designated by the Commissioner to enforce the provisions of this Article, may enter any place within the State at all reasonable times where plant materials are being grown, transported or offered for sale and require the presentation for inspection of all pertinent papers and records relative to the provisions of this Article, after giving notice in writing to the owner or custodian of the premises to be entered. If he refuses to consent to the entry, the Commissioner may apply to any district court judge and the judge may order, without notice, that the owner or custodian of the place permit the Commissioner to enter the place for the purposes herein stated and failure by any person to obey the order may be punished as for contempt.

(c) The Commissioner of Agriculture is authorized to apply to the superior court for, and the court shall have jurisdiction upon hearing and, for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of G.S. 106-202.19(a), regardless of whether there exists an adequate remedy at law. (1979, c. 964, s. 1; 1989, c. 508, s. 2; 1993, c. 539, s. 749; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1989, c. 508, which amended this section, provided in s. 5: "This act shall become effective October 1, 1989. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1989 amendment, effective October 1, 1989, deleted "including those promulgated pursuant to G.S. 106-202.15(1)" at the end of subdivision (a)(2); rewrote subdivision (a)(3); added subdivisions (a)(4) through (a)(11); deleted the sentence following subdivision (a)(11) which read "The illegal movement or distribution of each plant, pursuant to this subsection shall constitute a separate violation"; deleted the former last paragraph of subsection (a) which read "Each person convicted of violating the provisions of this Article, shall be fined not less than one hundred dollars ($100.00), upon the first conviction and not less than five hundred dollars ($500.00) upon a subsequent conviction"; and added subsections (a1) and (a2).

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of subsection (a1) inserted "Class 3" preceding "misdemeanor" and twice inserted "only".

## § 106-202.20. Forfeiture of illegally possessed plants; disposition of plants.

Upon conviction of any defendant for a violation of G.S. 106-202.19, the court, in its discretion, may order the defendant to forfeit any plant or plant parts which he possesses in violation of G.S. 106-202.19. The court shall direct disposition of any forfeited plant or plant part by destruction or sale. The proceeds from such a sale shall be paid to the North Carolina Department of Agriculture for use in the enforcement of this Article. (1989, c. 508, s. 3.)

**Editor's Note.** — Session Laws 1989, c. 508, s. 5 made this section effective October 1, 1989. Session Laws 1989, c. 508, s. 5 further provided that prosecutions for offenses occurring before October 1, 1989, would not be abated or affected by the act and that the statutes that would be applicable but for the act would remain applicable to those prosecutions.

## § 106-202.21. Ginseng dealer permits.

(a) No person shall act in the capacity of a ginseng dealer, or shall engage, or offer to engage in the business of, advertise as, or assume to act as a ginseng dealer unless that person holds a currently valid permit as provided in this Article.

(b) Applications for a ginseng dealer permit shall be on a form and shall contain information as prescribed by the Board. All permits issued under this section shall expire on 30 June of the fiscal year for which they are issued.

(c) A ginseng dealer permit may be renewed annually upon application to the Board.

(d) A ginseng dealer shall notify the Board of any change of address or business location within 30 days of such change.

(e) The Board shall issue to each applicant who satisfies the requirements of this Article a permit which entitles the applicant to conduct the business described in the application during the harvest season for which the permit is issued, unless the permit is suspended or revoked. (1989, c. 508, s. 3.)

**Editor's Note.** — Session Laws 1989, c. 508, s. 5 made this section effective October 1, 1989. Session Laws 1989, c. 508, s. 5 further provided that prosecutions for offenses occurring before October 1, 1989, would not be abated or affected by the act and that the statutes that would be applicable but for the act would remain applicable to those prosecutions.

### § 106-202.22. Denial, suspension, or revocation of permit.

(a) The Board may deny, suspend, revoke, or modify any permit issued under this Article if it finds that the applicant or permit holder has violated this Article or rules adopted pursuant to this Article.

(b) Suspension of any permit under this Article shall be for not less than one year. Any permit holder whose permit has been revoked shall not be eligible to reapply until two years after the final decision of the Board or two years after his permit is surrendered pursuant to such revocation, whichever is earlier. The expiration or voluntary surrender of a permit shall not deprive the Board of jurisdiction to suspend, revoke or modify such permit. A person whose permit has been suspended or revoked shall not engage in business as an employee, partner, or associate of another permit holder during the period of such revocation or suspension.

(c) If a permit is suspended or revoked, the permit holder shall, within five days of such suspension or revocation, surrender such permit to the Commissioner or his authorized representative. (1989, c. 508, s. 3.)

**Editor's Note.** — Session Laws 1989, c. 508, s. 5 made this section effective October 1, 1989. Session Laws 1989, c. 508, s. 5 further provided that prosecutions for offenses occurring before October 1, 1989, would not be abated or affected by the act and that the statutes that would be applicable but for the act would remain applicable to those prosecutions.

## ARTICLE 25A.

## *North Carolina Egg Law.*

### § 106-245.24. Penalties for violations; enjoining violations; venue.

(a) **(Effective October 1, 1994 — See editor's note)** Any person who violates any provision of this Article shall be guilty of a Class 3 misdemeanor.

(b) In addition to the criminal penalties provided for above, the Commissioner of Agriculture may apply by equity to a court of competent jurisdiction, and such court shall have jurisdiction and for cause shown to grant temporary or permanent injunction, or both, restraining any person from violating, or continuing to violate, any provisions of this Article.

(c) Any proceeding for a violation of this Article may be brought in the county where the violator resides, has a place of business or principal office or where the act or omission or part thereof, complained of occurred. (1955, c. 213, s. 12; 1965, c. 1138, s. 1; 1993, c. 539, s. 750; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (a) substituted "Class 3 misdemeanor" for "misdemeanor, punishable by a fine of not less than twenty-five dollars ($25.00) and not more than two hundred dollars ($200.00), or imprisonment for not more than 30 days, or both".

## ARTICLE 25B.

## *Egg Promotion Tax.*

### § 106-245.32. Levy of tax; rules.

An excise tax is levied on eggs and processed eggs sold for use in this State. The tax on eggs is five cents (5¢) for each case of 30 dozen eggs. The tax on processed eggs is eleven cents (11¢) for each 100 pounds of processed eggs sold for use in this State. The tax imposed by this section is payable only once on the same eggs or processed eggs.

Processed eggs include frozen eggs, liquid eggs, and hard-cooked eggs. "Use" means consumption by the consumer. The Board may adopt rules necessary to administer this tax. (1987, c. 815, s. 1; 1989 (Reg. Sess., 1990), c. 1001, s. 1.)

**Effect of Amendments.** — The 1989 (Reg. Sess., 1990) amendment, effective October 1, 1990, rewrote this section.

### § 106-245.33. Report and payment of tax by handler; definition and functions of handler.

(a) The tax imposed by this Article is payable monthly to the Department by the handler of eggs or processed eggs. The tax is due when a report is required to be filed. A handler shall file a report with the Department on a form provided by the Department within 20 days after the end of each month. The report shall state the volume of eggs or processed eggs handled by the handler during the preceding month.

(b) The term "handler" means any person who operates a grading station in North Carolina, a packer, huckster, or distributor who handles eggs in North Carolina, a farmer who packs, processes, or otherwise performs the functions of a handler in North Carolina, or a distributor or seller of processed eggs. The term "handler" includes any person in North Carolina who purchases eggs for sale or distribution or any farmer in North Carolina who sells or distributes eggs to anyone other than a registered handler.

For purposes of this Article, the functions of a handler of eggs or processed eggs include the sale, distribution, or other disposition of eggs or processed eggs in North Carolina regardless of where the eggs or processed eggs were produced or purchased.

The term "registered handler" means any person who has registered with the Department to receive monthly return forms for reporting the tax levied by this Article.

Every person, whether inside or outside the State, who engages in business in North Carolina as a handler is required to register and to collect and pay the tax due on all eggs or processed eggs sold for use in this State. A handler shall maintain a certificate of registration, file returns, and perform all other duties required of handlers. (1987, c. 815, s. 1; 1989 (Reg. Sess., 1990), c. 1001, s. 2.)

**Effect of Amendments.** — The 1989 (Reg. Sess., 1990) amendment, effective October 1, 1990, rewrote subsection (a); in subsection (b), in the first sentence of the first paragraph deleted "or" following "who handles eggs in North Carolina," and added "or distributor or seller of processed eggs," inserted "or processed eggs" in three places in the second paragraph, substituted "by this Article" for "herein" in the third paragraph, and in the fourth paragraph, in the first sentence, inserted "due," and substituted "on all eggs or processed eggs sold for use in the State" for "on eggs sold or delivered for storage, use or consumption in this State," and substituted "A handler" for "Such handlers" in the second sentence.

## § 106-245.34. Exemptions.

Eggs sold by a handler who sells less than 500 cases a year are exempt from the tax levied under this Article. Processed eggs sold by a handler who sells less than 1,000 pounds of processed eggs a year are exempt from the tax levied under this Article. The Board shall establish a procedure for returning taxes paid on exempt eggs or processed eggs. (1987, c. 815, s. 1; 1989 (Reg. Sess., 1990), c. 1001, s. 3.)

**Effect of Amendments.** — The 1989 (Reg. Sess., 1990) amendment, effective October 1, 1990, in the first sentence, substituted "Eggs sold by a handler who sells" for "The eggs of any person selling," substituted "500 cases a year" for "500 cases per year," and substituted "are" for "shall be exempted," added the second sentence, and substituted "on exempt eggs or processed eggs" for "by exempt persons" in the last sentence.

## § 106-245.35. Records to be kept by handler.

The handler shall keep a complete record of the eggs or processed eggs handled by him for a period of not less than two years from the time the eggs or processed eggs were handled. These records shall be open for inspection by the Commissioner or his duly authorized agents and shall be established and maintained as required by the Commissioner. (1987, c. 815, s. 1; 1989 (Reg. Sess., 1990), c. 1001, s. 4.)

**Effect of Amendments.** — The 1989 (Reg. Sess., 1990) amendment, effective October 1, 1990, in the first sentence, substituted "a complete record of the eggs or processed eggs" for "a complete record of the eggs subject to the provisions of this Article which have been packed, processed or," deleted "and shall preserve such records" preceding "for a period," and substituted "the eggs or processed eggs were handled" for "such eggs were packed, processed or handled," and substituted "These records" for "Such records" in the second sentence.

## § 106-245.38. Violations.

(a) **(Effective October 1, 1994 — See editor's note)** It shall be a Class 1 misdemeanor for any handler knowingly to report falsely to the Department the quantity of eggs or processed eggs handled by him during any period, to falsify the records of the eggs or processed eggs handled by him, to fail to keep a complete record of the eggs or processed eggs handled by him, or to fail to preserve the records for a period of not less than two years from the time the eggs or processed eggs are handled.

(b) It shall be a violation of the North Carolina Egg Law, Article 25A of this Chapter, for a handler to fail to register as required by this Article. Any eggs transported, sold, or offered for sale by a handler who is not a registered handler shall be subject to the stop-sale and penalty provisions of the North Carolina Egg Law. (1987, c. 815, s. 1; 1989 (Reg. Sess., 1990), c. 1001, s. 5; 1993, c. 539, s. 751; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1989 (Reg. Sess., 1990) amendment, effective October 1, 1990, in subsection (a), inserted "or processed eggs" in four places, deleted "or" following "during any period," substituted "fail to preserve the records" for "fail to preserve such records," and substituted "from the time the eggs" for "from the time such eggs"; and in subsection (b), divided the former single sentence into the present first and second sentences by substituting "by this Article" for "herein, and" at the end of the first sentence, inserted "Article 25A of this Chapter" in the first sentence, substituted "a handler who is not a registered handler" for "such handler," and deleted "(G.S. 106-245.13 et seq.)" at the end of the present second sentence.

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (a) inserted "Class 1" preceding "misdemeanor".

## ARTICLE 26.

## *Inspection of Ice Cream Plants, Creameries, and Cheese Factories.*

## § 106-254. Inspection fees; wholesalers; retailers and cheese factories.

For the purpose of defraying the expenses incurred in the enforcement of this Article, the owner, proprietor or operator of each ice cream factory where ice cream, milk shakes, milk sherbet, sherbet, water ices, mixes for frozen or semifrozen desserts and other similar frozen or semifrozen food products are made or stored, or any cheese factory or butter-processing plant that disposes of its products at wholesale to retail dealers for resale in this State shall pay to the Commissioner of Agriculture each year an inspection fee of forty dollars ($40.00). Each maker of ice cream, milk shakes, milk sherbet, sherbet, water ices and/or other similar frozen or semifrozen food products who disposes of his product at retail only, and cheese factories, shall pay to the Commissioner of Agriculture an inspection fee of ten dollars ($10.00) each year. The inspection fee of ten dollars ($10.00) shall not apply to conventional spindle-type milk-shake mixers, but shall apply to milk-shake dispensing and vending machines, which operate on a continuous or automatic basis. (1921, c. 169, s. 9; C.S., s. 7251(i); 1933, c. 431, s. 4; 1959, c. 707, s. 4; 1961, c. 791; 1989, c. 544, s. 15.)

**Editor's Note.** — Session Laws 1989, c. 544, which amended this section, provided in s. 23: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "forty dollars ($40.00)" for "twenty dollars ($20.00)" in the first sentence; and substituted "ten dollars ($10.00)" for "five dollars ($5.00)" in the second sentence and the last sentence.

### § 106-255. (Effective October 1, 1994 — See editor's note) Violation of Article a misdemeanor; punishment.

Any person, firm, or corporation who shall violate any of the provisions of this Article shall be guilty of a Class 3 misdemeanor, and upon conviction thereof shall only be fined not to exceed twenty-five dollars ($25.00) for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 169, s. 10; C.S., s. 7251(j); 1993, c. 539, s. 752; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 3" preceding "misdemeanor" and inserted "only".

## ARTICLE 28.

## *Records and Reports of Milk Distributors and Processors.*

### § 106-266. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Any person, firm, or corporation violating any of the provisions of this Article and/or any rule, regulation or order promulgated in accordance with the provisions of this Article shall be guilty of a Class 1 misdemeanor. (1941, c. 162, s. 7; 1951, c. 1133, s. 4; 1993, c. 539, s. 753; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor, and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000), or imprisoned for not more than one year, or both fined and imprisoned in the discretion of the court".

## ARTICLE 28B.

## *Regulation of Production, Distribution, etc., of Milk and Cream.*

### § 106-266.6. Definitions.

As used in this Article, unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

(1) "Affiliate" means any person and/or subsidiary thereof, who has, either directly or indirectly, actual control or legal control over a distributor, whether by stock ownership or any other manner.

(2) "Books and records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.

(3) "Commission" means the North Carolina Milk Commission created by this Article.

(4) "Distributor" or "subdistributor" means any of the following persons engaged in the business of distributing, marketing, or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in the State of North Carolina, but shall not mean any distributor who sells 25 gallons or less of milk per day which is produced on his own farm:

- a. Persons, irrespective of whether any such person is a producer:
  - 1. Who pasteurize or bottle milk or process milk into fluid milk;
  - 2. Who sell and/or market fluid milk at wholesale or retail:
    - I. To hotels, restaurants, stores or other establishments for consumption on the premises,
    - II. To stores or other establishments for resale, or
    - III. To consumers;
  - 3. Who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.
- b. Persons wherever located or operating, whether within or without the State of North Carolina, who purchase, market or handle milk for resale as fluid milk in the State.

(5) "Health authorities" includes the Department of Environment, Health, and Natural Resources, the State Department of Agriculture, the Commissioner of Agriculture, and the local health authorities.

(6) "Licensee" means a licensed milk distributor.

(7) "Market" means any city, town, or village of the State, or any two or more cities and/or towns and/or villages and surrounding territory designated by the Commission as a natural marketing area.

(8) "Milk" means the lacteal secretion obtained by the milking of one or more cows and reconstituted milk products derived from the recombining of dry milk solids, evaporated or condensed milk with water, and which is pasteurized, standardized or otherwise processed with a view of selling it as fluid milk in its several forms, whether cultured or with added bacteria or other ingredients, regardless of grade or fat content, including whole milk, lowfat milk, cream, chocolate milk, plain buttermilk, cream buttermilk, skim milk, special or premium milk, flavored milk or drinks, concentrated milk, sterile milk, dietary modified milk, liquid milk shake mix, half and half, eggnog, other milk-cream mixtures and the milk portion of any imitation milk. Said term excludes the lacteal secretion of one or more dairy cows where the secretion is to be sold for any other purpose.

(9) "Person" means any person, firm, corporation or association.

(10) "Producer" means any person, irrespective of whether such person is a member of a producer association or a distributor, who operates to produce milk for sale as fluid milk in the State.

(11) "Sanitary regulations" includes all laws and ordinances relating to the production, handling, transportation, distribution and sale of milk and, so far as applicable thereto, the State Sanitary Code and lawful regulations adopted by the dairy and food divisions, or by the board of health of any county or municipality.

(12) "Subdistributor" as distinguished from a "distributor" means one who does not process milk but purchases its milk from a licensed distributor for distribution.

(13) "Subsidiary" means any person or officer over whom or which a distributor or an affiliate of a distributor has, or several distributors have either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner. (1953, c. 1338, s. 1; 1971, c. 779, s. 1; 1973, c. 476, s. 128; 1977, c. 426, s. 1; 1989, c. 727, s. 219(32).)

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources" in subdivision (5).

## § 106-266.14. (Effective October 1, 1994 — See editor's note) Penalties.

Any person violating any provisions of this Article, or order promulgated under the provisions thereof, or of any license issued by the Commission shall be guilty of a Class 1 misdemeanor, and each day during which such violation shall continue shall be deemed a separate violation. Prosecutions for violations of this Article shall be instituted by the Attorney General or otherwise, in any county or city of the State of North Carolina in which such violations occur. (1953, c. 1338, s. 11; 1971, c. 779, s. 1; 1993, c. 539, s. 754; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence inserted "Class 1" preceding "misdemeanor" and deleted "and may be prosecuted and punished therefor, and upon conviction, shall be punished by a fine of not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100.00), or by imprisonment in the county jail for not less than 30 days nor more than one year, or by both fine and imprisonment" following "misdemeanor".

## ARTICLE 29.

## *Inspection, Grading and Testing Milk and Dairy Products.*

## § 106-267.1. License required; fee; term of license; examination required.

Every person who shall test milk or cream in this State by, or sample milk for, the Babcock method or otherwise for the purpose of determining the percentage of butterfat or milk fat contained therein, where such milk or cream is bought and paid for on the basis of the amount of butterfat contained therein, shall first obtain a license from the Commissioner of Agriculture. Any person applying for such license or renewal of license shall make written and signed application on blanks to be furnished by the Commissioner of Agriculture. The granting of a license shall be conditioned upon the passing by the applicant of an examination, to be conducted by or under the direction of the Commissioner of Agriculture. All licenses so issued or renewed shall expire on December 31 of each year, unless sooner revoked, as provided in G.S. 106-267.3. A license fee of five dollars ($5.00) for each license so granted or renewed shall be paid to the Commissioner of Agriculture by the applicant before any license is granted. (1951, c. 1121, s. 1; 1959, c. 707, s. 5; 1989, c. 544, s. 14.)

**Editor's Note.** — Session Laws 1989, c. 544, which amended this section, provided in s. 23: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "five dollars ($5.00)" for "two dollars ($2.00)" in the last sentence.

## § 106-267.4. (Effective October 1, 1994 — See editor's note) Representative average sample; misdemeanor, what deemed.

In taking samples of milk or cream from any milk can, cream can or any container of milk or cream, the contents of such milk can, cream can, or container of milk and cream shall first be thoroughly mixed either by stirring or otherwise, and the sample shall be taken immediately after mixing or by any other method which gives a representative average sample of the contents, and it is hereby made a Class 2 misdemeanor to take samples by any method or to fraudulently manipulate such samples so as not to give an accurate and representative average sample where milk or cream is bought or sold and where the value of said milk or cream is determined by the butterfat contained therein. (1951, c. 1121, s. 1; 1993, c. 539, s. 755; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor".

## § 106-268.1. (Effective October 1, 1994 — See editor's note) Penalties.

Any person, firm or corporation violating any of the provisions of this Article, or any of the rules, regulations or standards promulgated hereunder, shall be deemed guilty of a Class 2 misdemeanor. (1951, c. 1121, s. 1; 1993, c. 539, s. 756; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars ($100.00) and the cost of prosecution, or by imprisonment in the county jail for a period not more than two months, or both such fine and imprisonment in the discretion of the court".

## ARTICLE 30.

## *Board of Crop Seed Improvement.*

### § 106-275. (Effective October 1, 1994 — See editor's note) False certification of purebred crop seeds made misdemeanor.

It shall be a Class 1 misdemeanor for any person, firm, association, or corporation, selling seeds, tubers, plants, or plant parts in North Carolina, to use any evidence of certification, such as a blue tag or the word "certified" or both, on any package of seed, tubers, plants, or plant parts, nor shall the word "certified" be used in any advertisement of seeds, tubers, plants, or plant parts, unless such commodities used for plant propagation shall have been duly inspected and certified by the agency of certification provided for in this Article, or by a similar legally constituted agency of another state or foreign country. (1933, c. 340, s. 1; 1993, c. 539, s. 757; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" and deleted "punishable by fine or imprisonment in the discretion of the court" following "misdemeanor".

## ARTICLE 31.

## *North Carolina Seed Law.*

### § 106-277.17. Registration and variety testing.

The Commissioner is authorized to require the registration, after field testing for performance and trueness-to-variety, of any variety, blend, or hybrid as a prerequisite to sale in this State and to promulgate rules and regulations pertaining to same. The Commissioner is further authorized to prohibit the sale of any variety, blend, or hybrid or any kind of crop, by and with the advice of the Director of the North Carolina Agricultural Research Service, that has been found by official field tests to be inferior, misrepresented or unsuited to conditions within the State. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182; 1987 (Reg. Sess., 1988), c. 1034, ss. 11, 12; 1989, c. 770, s. 24.)

**Effect of Amendments.** —
The 1989 amendment, effective August 12, 1989, substituted "Director of the North Carolina Agricultural Research Service" for "director of research of the North Carolina agricultural experiment station."

## § 106-277.20. Right of entry for purposes of inspection; duty of vendors.

For the purpose of carrying out this Article the Commissioner or his agent is authorized to enter upon any public or private premises during regular business hours in order to have access to seeds subject to this Article and the rules and regulations thereunder. It shall be the duty of the dealer or vendor to arrange seed lots so as to be accessible for inspection, and to provide such information and records as may be deemed necessary. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

**Editor's Note.** — This section is set out above to correct a typographical error in this section as it appears in the main volume.

## § 106-277.24. (Effective October 1, 1994 — See editor's note) Penalty for violations.

Any person, firm or corporation violating any provision of this Article or any rule or regulation adopted pursuant thereto shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall only pay a fine of not more than five hundred dollars ($500.00). (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182; 1993, c. 539, s. 758; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 3" preceding "misdemeanor" and inserted "only".

## § 106-277.28. License and inspection fees.

For the purpose of providing a fund to defray the expense of inspection, examination, and analysis of seeds and the enforcement of this Article:

(1) Repealed by Session Laws 1991, c. 588, s. 1, effective July 1, 1992.

(2) Each seed dealer who offers for sale any agricultural, vegetable, or lawn or turf seeds for seeding purposes shall register with the Commissioner and shall obtain an annual license, for each location where activities are conducted, by January 1 of each year and shall pay the following license fee:

| | |
|---|---|
| a. Wholesale or combined wholesale and retail seed dealer | $100.00 |
| b. Retail seed dealer with sales of no more than $500.00 | 5.00 |
| c. Retail seed dealer with sales of more than $500.00 but no more than $1,000 | 15.00 |

d. Retail seed dealer with sales of more than $1,000 .................................................. 25.00.

(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed sold and pay an inspection fee of two cents (2¢) for each container of seeds weighing 10 pounds or more. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown.

Each seed dealer or grower shall keep accurate records of the quantity of seeds and container weights sold from each distribution point in the State. These records shall be available to the Commissioner or an authorized representative of the Commissioner at any and all reasonable hours for the purpose of verifying the quantity of seed sold and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds sold. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter, and the inspection fee shall be due and payable with the report. If the report is not filed and the inspection fee paid to the Department of Agriculture by the tenth day following the date due, or if the report of the quantity or container weights is false, the Commissioner may issue a stop-sale order for all seed offered for sale by the dealer or grower. If the inspection fee is unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fee due. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182; 1969, c. 105; 1987 (Reg. Sess., 1988), c. 1034, s. 13; 1989, c. 37, s. 8; 1991, c. 98, s. 1; c. 588, s. 1.)

**Effect of Amendments.** —

The 1989 amendment, effective March 30, 1989, substituted "no more" for "less" in paragraph (2)b and paragraph (2)c.

Session Laws 1991, c. 98, s. 1, effective July 1, 1991, in subdivision (3) as it read prior to amendment by Session Laws 1991, c. 588, s. 1, substituted "inspection fee due" for "inspection fee due and the Commissioner shall have authority to deduct said amount due and penalty from the cash, securities or bond which has been deposited with the Department of Agriculture" in the last sentence of the second paragraph, and deleted the former third paragraph which set a deposit amount for a seed dealer to guarantee faithful performance.

Session Laws 1991, c. 588, s. 1, effective July 1, 1992, in this section as amended by Session Laws 1991, c. 98, s. 1, rewrote the catchline; substituted "and analysis of seeds and the enforcement of this Article" for "analyses of seeds and enforcement of the provisions of the Article" in the introductory language; repealed subdivision (1), which related to the requirement of seed dealers or growers obtaining seed analysis tags; in subdivision (2), in the introductory language substituted "who offers for sale" for "selling, distributing, offering, or exposing for sale in, or exporting from, this State" and substituted "the following license fee" for "for such license as follows"; and in subdivision (3) in the first paragraph rewrote the first sentence and added the second sentence, and in the second paragraph in the first sentence deleted "Upon granting authority, the Commissioner of Agriculture shall require" preceding "each" and substituted "shall keep accurate records of the quantity" for "to keep such records as may be necessary to indicate accurately the quantity", in the second sentence substituted "These" for "Such", substituted "an authorized representative of the Commissioner" for "his duly authorized representative", and substituted "verifying" for "making such examination as is necessary to verify", and substituted the language beginning "is false, the Commissioner" for "be false, the Commissioner may revoke the authority to use the reporting system" in the fifth sentence.

## ARTICLE 31B.

## *Vegetable Plant Law.*

### § 106-284.20. (Effective October 1, 1994 — See editor's note) Interference with Commissioner, etc., or other violation a misdemeanor; penalties.

If anyone shall interfere with or attempt to interfere with the Commissioner or any of his agents, while engaged in the performance of his duties under this law or shall violate any provision of this law or any rule or regulation of the Board of Agriculture adopted pursuant to this law, he shall be guilty of a Class 1 misdemeanor. Each day's violation shall constitute a separate offense. (1959, c. 91, s. 7; 1973, c. 1370, s. 6; 1993, c. 539, s. 759; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence substituted "Class 1 misdemeanor" for "misdemeanor and shall be fined or imprisoned in the discretion of the court".

## ARTICLE 31C.

## *North Carolina Commercial Feed Law of 1973.*

### § 106-284.34. Registration.

(a) No person shall manufacture or distribute a commercial feed in this State, unless he has filed with the Commissioner on forms provided by the Commissioner, his name, place of business, and location of each manufacturing facility in this State, if any, and made application to the Commissioner for a permit to report the quantity of commercial feed distributed in this State.

(b) Manufacturers of registered feeds may apply for, and the Commissioner at his discretion may issue, numbered permits authorizing manufacturers of registered feeds to purchase commercial feed as defined in G.S. 106-284.33(4), and the responsibility for the payment of the inspection fee assessed by the provisions of this Article will be assumed by the purchaser to whom such permit has been issued. The Commissioner may at his discretion, and without notice, cancel any permit issued under the provision of this section. The use of permits issued under the provisions of this section shall be governed by rules and regulations promulgated by the Commissioner.

(c) No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Commissioner. Upon approval by the Commissioner or his duly designated agent the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year. An annual registration fee of three dollars ($3.00) for each commercial feed other than canned pet food shall accompany each request for registration. An annual registration fee of ten dollars ($10.00) for each canned pet food shall accompany each request for registration.

(d) The Commissioner is empowered to refuse registration of any commercial feed not in compliance with the provisions of this Article and to cancel any registration subsequently found not to be in compliance with any provisions of this Article: Provided, that no registration shall be refused or canceled unless the registrant shall have been given an opportunity to be heard before the Commissioner or his duly designated agent and to amend his application in order to comply with the requirements of this Article.

(e) The manufacturer of commercial feed that has not been registered and is found being distributed in the State shall pay a thirty-dollar ($30.00) delinquent registration fee in addition to the regular registration fee. (1973, c. 771, s. 5; 1989, c. 544, s. 7.)

**Editor's Note.** — Session Laws 1989, c. 544, which amended this section, provided in s. 23: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, in subsection (c) substituted "three dollars ($3.00)" for "one dollar ($1.00)" in the next to the last sentence, and substituted "ten dollars ($10.00)" for "five dollars ($5.00)" in the last sentence; and substituted "thirty-dollar ($30.00)" for "twenty-five dollar ($25.00)" in subsection (e).

## § 106-284.40. Inspection fees and reports.

(a) An inspection fee at the rate of three cents (3¢) for each carton of 48 cans shall be paid on canned pet food distributed in this State by the person whose name appears on the label as the manufacturing distributor or guarantor subject to (b)(1), (2), (3), and (5) of this section.

(b) An inspection fee at the rate of twelve cents (12¢) per ton shall be paid on commercial feeds distributed in the State by the person whose name appears on the label of the commercial feed as the manufacturer, distributor or guarantor of the commercial feed, subject to the following:

(1) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.

(2) No fee shall be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.

(3) No fee shall be paid on commercial feeds which are used as ingredients or a base for the manufacture of commercial feeds which are registered, if the fee has already been paid. If the inspection fee has already been paid on such com-

mercial feed, the amount paid shall be deducted from the gross amount due on the total feed produced.

(4) In the case of a commercial feed other than canned pet food which is distributed in the State only in packages of five pounds or less, an annual registration fee of thirty dollars ($30.00) shall be paid in lieu of the inspection fee specified above.

(5) The minimum inspection fee shall be ten dollars ($10.00) per quarter unless no feed was sold in the State during the quarter.

(6) Manufacturers of commercial feeds may appear before the Board, and after finding there exists a contract feeder relationship between a manufacturer of commercial feeds and an independent contractor, the Board may issue annual numbered permits exempting that manufacturer of commercial feed from paying the inspection fee assessed by the provisions of this law for that feed delivered to the contract feeder. The manufacturer of ingredients who sells such ingredients to manufacturers of commercial feeds under this subdivision shall have in his possession the exemption number of the permit referred to in G.S. 106-284.34(b) and/or the permit issued by the Board under this subdivision before the supplier may be relieved of the responsibility for payment of the inspection fee. The holder of a valid contract feeder exemption permit shall be exempt from paying the inspection fee on all ingredients purchased for its own use, provided that at least one-half of the ingredients purchased in the previous calendar year were used in feed delivered to contract feeders.

The holder of said permit may voluntarily return said permit to the Commissioner for cancellation at which time said holder may not apply for or receive another exemption permit under this subdivision for a period of 12 months. The exemption permits under this subdivision shall be renewable automatically every year by the Board without additional findings of fact unless it is brought to the Board's attention by the Commissioner or his duly designated officer or employee that there no longer exists the relationship of a contract feeder between the manufacturer of commercial feeds and an independent contractor. In the event the Commissioner or his duly designated officer or employee notifies the Board when the permit is to be automatically renewed or anytime the permit is in effect, that there no longer exists a contract feeder relationship for the permit holder, the Board shall determine the veracity of the notification and revoke said permit if the facts are found to be true by the Board.

Commercial feeds exempt from inspection fees under this subdivision shall not be subject to sampling and analysis other than as may be necessary to determine compliance with good manufacturing practice regulations pertaining to medicated animal feed and medicated feed premixes established under G.S. 106-284.38(4) of this law.

(c) Each person who is liable for the payment of such fee shall:

(1) File, not later than the last day of January, April, July and October of each year, a quarterly statement setting forth

the number of net tons of commercial feeds and/or cases of canned pet food distributed in this State during the preceding calendar quarter, and upon filing such statements shall pay the inspection fee at the rate stated in subsections (a) and (b) of this section. Inspection fees which are due and owing and have not been remitted to the Commissioner within 15 days following the due date shall have a penalty fee of ten percent (10%) (minimum ten dollars ($10.00)) added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the Commissioner from taking other actions as provided in this Chapter.

(2) Keep such records as may be necessary or required by the Commissioner to indicate accurately the tonnage of commercial feed distributed in this State, and the Commissioner or his duly designated agent shall have the right to examine such records during normal business hours, to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor. (1973, c. 771, s. 11; 1975, c. 900, s. 2; c. 961, s. 2; 1987 (Reg. Sess., 1988), c. 1043; 1989, c. 544, s. 6.)

**Editor's Note.** — Session Laws 1989, c. 544, which amended this section, provided in s. 23: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "three cents (3¢)" for "two cents (2¢)" in subsection (a); and substituted "thirty dollars ($30.00)" for "twenty-five dollars ($25.00)" in subdivision (b)(4).

## § 106-284.44. Penalties; enforcement of Article; judicial review; confidentiality of information.

(a) **(Effective October 1, 1994 — See editor's note)** Any person who shall be adjudged to have violated any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, or his duly designated agent, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) Nothing in this Article shall be construed as requiring the Commissioner or his representative to: (i) report for prosecution, or (ii) institute seizure proceedings, or (iii) issue a withdrawal from distribution order, as a result of minor violations of the Article, or when he believes the public interest will best be served by suitable notice of warning in writing.

(c) It shall be the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the Commissioner reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the Commissioner or his designated agent.

(d) The Commissioner is hereby authorized to apply for and the court to grant a temporary restraining order and a preliminary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Article or any rule or regulation promulgated under the Article notwithstanding the existence of other remedies at law.

(e) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this Article may within 30 days thereafter bring action in the Superior Court of Wake County for judicial review of such act, order or ruling according to the provisions of Chapter 150B of the General Statutes.

(f) **(Effective October 1, 1994 — See editor's note)** Any person who uses to his own advantage, or reveals to other than the Board, or officers of the other State agencies whose requests are deemed justifiable by the Commissioner, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this Article, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a Class 2 misdemeanor; provided, that this prohibition shall not be deemed as prohibiting the Commissioner, or his duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States government, or of the other states, who are similarly prohibited by law from revealing this information. (1973, c. 47, s. 2; c. 771, s. 15; c. 1331, s. 3; 1987, c. 827, s. 1; 1993, c. 539, ss. 760, 761; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of subsection (a) substituted "Class 2 misdemeanor" for "misdemeanor, and for each violation shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or shall be imprisoned for not more than 60 days, or both"; and in subsection (f) substituted "Class 2 misdemeanor" for "misdemeanor and shall be subject upon conviction to the penalties contained in subsection (a) of this section".

## ARTICLE 34.

## *Animal Diseases.*

## Part 1. Quarantine and Miscellaneous Provisions.

### § 106-307. (Effective October 1, 1994 — See editor's note) Violation of proclamation or rules.

Any person, firm, or corporation violating the terms of the proclamation of the Governor, or any rule or regulation made by the Commissioner of Agriculture in pursuance thereof, shall be guilty of a Class 2 misdemeanor. (1915, c. 174, s. 4; C.S., s. 4874; 1969, c. 606, s. 1; 1993, c. 539, s. 762; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and fined not in excess of five hundred dollars ($500.00) or imprisoned up to six months, or both fined and imprisoned, in the discretion of the court".

### § 106-307.6. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Any person, firm or corporation who shall violate any provisions set forth in G.S. 106-307.1 to 106-307.5 or any rule or regulation duly established by the State Board of Agriculture shall be guilty of a Class 2 misdemeanor. (1943, c. 640, s. 6; 1969, c. 606, s. 1; 1993, c. 539, s. 763; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and fined not in excess of five hundred dollars ($500.00) or imprisoned up to six months, or both fined and imprisoned, in the discretion of the court".

## Part 3. Hog Cholera.

### § 106-310. (Effective October 1, 1994 — See editor's note) Burial of hogs dying natural death required.

It shall be the duty of every person, firm, or corporation who shall lose a hog by any form of natural death to have the same buried in the earth to a depth of at least two feet within 12 hours after the death of the animal. Any person, firm, or corporation that shall fail to comply with the terms of this section shall be guilty of a Class 3 misdemeanor, and shall be fined not less than five dollars ($5.00) nor more than ten dollars ($10.00) for each offense, at the discretion of the court. (1915, c. 225; C.S., s. 4877; 1993, c. 539, s. 764; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the second sentence inserted "Class 3" preceding "misdemeanor".

### § 106-311. (Effective October 1, 1994 — See editor's note) Hogs affected with cholera to be segregated and confined.

If any person having swine affected with the disease known as hog cholera, or any other infectious or contagious disease, who discovers the same, or to whom notice of the fact shall be given, shall fail or neglect for one day to secure the diseased swine from the approach of or contact with other hogs not so affected, by penning or otherwise securing and effectually isolating them so that they shall not have access to any ditch, canal, branch, creek, river or other watercourse which passes beyond the premises of the owners of such swine, he shall be guilty of a Class 3 misdemeanor. (1889, c. 173, s. 1; 1891, c. 67, ss. 1, 3; 1899, c. 47; 1903, c. 106; Rev., s. 3297; 1913, c. 120; C.S., s. 4490; 1993, c. 539, s. 765; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor, and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days".

## § 106-312. (Effective October 1, 1994 — See editor's note) Shipping hogs from cholera-infected territory.

It shall be unlawful for any person, firm or corporation in any district or territory infected by cholera to bring, carry, or ship hogs into any stock-law section or territory, unless such hogs have been certified to be free from cholera either by the farm demonstration agent of the county or some other suitable person to be designated by the clerk of the superior court. Any violation of this section shall constitute a Class 1 misdemeanor. (1917, c. 203; C.S., s. 4491; 1993, c. 539, s. 766; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

## § 106-314. (Effective October 1, 1994 — See editor's note) Manufacture and use of serum and virus restricted.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State anti-hog-cholera serum unless said anti-hog-cholera serum is produced at the serum plant of the State Department of Agriculture, or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State of North Carolina, virulent blood from hog-cholera-infected hogs, or virus, unless said virulent blood, or virus, is produced at the serum plant of the State Department of Agriculture or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the State unless and until permission has been given in writing by the State Veterinarian for such distribution, sale or use. Said permission to be cancelled by the State Veterinarian when necessary.

Any person, firm, or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a Class 1 misdemeanor. (1915, c. 88; 1919, c. 125, ss. 1, 2, 3; C.S., s. 4879; 1959, c. 576, s. 1; 1993, c. 539, s. 767; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last paragraph inserted "Class 1" preceding "misdemeanor".

## § 106-316.4. (Effective October 1, 1994 — See editor's note) Penalties for violation of §§ 106-316.1 to 106-316.5.

Any person, firm or corporation violating the provisions of G.S. 106-316.1 to 106-316.5 shall be guilty of a Class 1 misdemeanor. (1955, c. 824, s. 4; 1993, c. 539, s. 768; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Section 106-316.5, referred to above, was repealed by Session Laws 1963, c. 1084, s. 2.

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor, and upon the first conviction shall be fined not less than fifty dollars ($50.00) or imprisoned in the discretion of the court" at the end of the first sentence, and deleted the last sentence which concerned a second offense.

## § 106-321. (Effective October 1, 1994 — See editor's note) Penalties for violation.

Any person, firm or corporation who shall violate any provision set forth in this Article or any rule or regulation duly established by the State Board of Agriculture or emergency rules and regulations established by the Commissioner of Agriculture shall be guilty of a Class 1 misdemeanor. (1941, c. 373, s. 5; 1955, c. 424, s. 4; 1993, c. 539, s. 769; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court".

## Part 5. Tuberculosis.

### § 106-349. (Effective October 1, 1994 — See editor's note) Violation of law a misdemeanor.

Any person or persons who shall violate any provision set forth in G.S. 106-336 to 106-350, or any rule or regulation duly established by the State Board of Agriculture or any officer or inspector who shall willfully fail to comply with any provisions of this law, shall be guilty of a Class 1 misdemeanor. (1921, c. 177, s. 14; C.S., s. 4895(n); 1993, c. 539, s. 770; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

### § 106-350. (Effective October 1, 1994 — See editor's note) Sale of tubercular animal a felony.

Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with tuberculosis without permission as provided for in G.S. 106-338 shall be guilty of a Class I felony. (1921, c. 177, s. 15; C.S., s. 4895(o); 1993, c. 539, s. 1295; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class I felony" for "felony, and punishable by imprisonment of not less than one year nor more than five years in the State prison".

## Part 6. Cattle Tick.

### § 106-360. (Effective October 1, 1994 — See editor's note) Duty of sheriff.

It shall be the duty of the sheriff, in any county in which the work of tick eradication is in progress, to render all quarantine inspectors any assistance necessary in the enforcement of G.S. 106-351 to 106-363 and the regulations of the North Carolina Department of Agriculture. If the sheriff of any county shall neglect, fail or refuse to render his assistance when so required, he shall be guilty of a

Class 1 misdemeanor. (1923, c. 146, s. 11; C.S., s. 4895(z); 1993, c. 539, s. 771; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the second sentence substituted "Class 1 misdemeanor" for "misdemeanor and be punishable at the discretion of the court".

## § 106-362. (Effective October 1, 1994 — See editor's note) Penalty for violation.

Any person, firm or corporation who shall violate any provisions set forth in G.S. 106-351 to 106-363 or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provision of G.S. 106-351 to 106-363 shall be guilty of a Class 1 misdemeanor. (1923, c. 146, s. 13; C.S., s. 4895(bb); 1993, c. 539, s. 772; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

## § 106-363. (Effective October 1, 1994 — See editor's note) Damaging dipping vats a felony.

Any person or persons who shall willfully damage or destroy by any means any vat erected, or in the process of being erected, as provided for tick eradication, shall be guilty of a Class H felony. (1923, c. 146, s. 14; C.S., s. 4895(cc); 1993, c. 539, s. 1296; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class H felony" for "felony and upon conviction shall be imprisoned not less than two years nor more than 10 years in the State prison".

## Part 8. Brucellosis (Bang's Disease).

### § 106-397. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Any person or persons who shall violate any provision set forth in G.S. 106-388 to 106-398, or any rule or regulation duly established pursuant to this Article by the State Board of Agriculture or any inspector who shall willfully fail to comply with any provisions of G.S. 106-388 to 106-398, shall be guilty of a Class 1 misdemeanor. (1937, c. 175, s. 11; 1967, c. 511; 1993, c. 539, s. 773; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

### § 106-398. (Effective October 1, 1994 — See editor's note) Punishment for sale of animals known to be infected, or under quarantine.

Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with brucellosis, or under quarantine because of suspected exposure to brucellosis, except as provided for in G.S. 106-388 to 106-398, shall be guilty of a Class 1 misdemeanor. (1937, c. 175, s. 12; 1967, c. 511; 1993, c. 539, s. 774; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor, and punishable by a fine of not less than fifty dollars ($50.00) and not more than two hundred dollars ($200.00), or imprisoned for a term of not less than 30 days or more than two years".

## Part 9. Control of Livestock Diseases.

### § 106-404. (Effective October 1, 1994 — See editor's note) Animals affected with glanders to be killed.

If the owner of any animal having the glanders or farcy shall omit or refuse, upon discovery or knowledge of its condition, to deprive the same of life at once, he shall be guilty of a Class 3 misdemeanor. (1881, c. 368, s. 8; Code, s. 2489; 1891, c. 65; Rev., s. 3296; C.S., s. 4489; 1993, c. 539, s. 775; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor, and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days".

### § 106-405. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Any person or persons who shall knowingly and willfully violate any provision of G.S. 106-400 to 106-403 shall be guilty of a Class 2 misdemeanor. (1939, c. 360, s. 6; 1969, c. 693, s. 3; 1993, c. 539, s. 776; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and punishable by a fine not in excess of five hundred dollars ($500.00) or imprisonment not in excess of six months, or both fine and imprisonment".

## Part 10. Feeding Garbage to Swine.

### § 106-405.9. (Effective October 1, 1994 — See editor's note) Penalties.

Any person, firm or corporation who shall knowingly violate any provisions set forth in this Part or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of this Part shall be guilty of a Class 1 misdemeanor. Such person, firm, or corporation may be enjoined from continuing such violation. (1953, c. 720, s. 9; 1993, c. 539, s. 777; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence substituted "Class 1 misdemeanor" for "misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court".

## Part 11. Equine Infectious Anemia.

### § 106-405.19. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Any person who shall willfully move, direct the movement, or allow to be moved, from the premises where quartered any animal or animals known to be infected with equine infectious anemia, or under quarantine because of suspected exposure to equine infectious anemia, or who shall violate any provision of this Part or any rule or regulation promulgated by the Board of Agriculture under this Part shall be guilty of a Class 1 misdemeanor. (1973, c. 1198, s. 5; 1993, c. 539, s. 778; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or imprisoned, or both, in the discretion of the court".

## ARTICLE 35.

## *Public Livestock Markets.*

### § 106-411. (Effective October 1, 1994 — See editor's note) Regulation of use of livestock removed from market; swine shipped out of State.

Any person or persons who shall remove, or whose agent or employee at the direction of the employer, shall remove from a public livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for immediate slaughter only in compliance with this Article and the applicable regulations of the Department of Agriculture. It shall be a Class 1 misdemeanor for the owner of any cattle, swine or other livestock purchased for immediate slaughter, to order, direct or procure his agent or employee to transport said cattle, swine, or other livestock to any place other than a recognized slaughter plant or as provided in G.S. 106-409 and 106-410; and the agent or employee who transports said animal or animals shall likewise be guilty of a Class 1 misdemeanor.

Provided that, it shall not be a violation of law to ship swine out of this State to holding or feeding lots as provided for in G.S. 106-410. (1941, c. 263, s. 6; 1943, c. 724, s. 4; 1949, c. 997, s. 5; 1967, c. 894, s. 8; 1993, c. 539, s. 779; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the second sentence of the first paragraph inserted "Class 1" preceding "misdemeanor" twice.

## § 106-414. (Effective October 1, 1994 — See editor's note) Transportation, sale, etc., of diseased livestock; burden of proving health; movement to laboratory; removal of identification.

No cattle, swine, or other livestock with visible symptoms of a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this State except upon written permission of the Commissioner of Agriculture or his authorized representative. The burden of proof to establish the health of any animal transported on the public highways of this State, or sold, traded, or otherwise disposed of in any public place shall be upon the vendor. Any person who shall sell, trade, or otherwise dispose of any animal affected with, or exposed to, a contagious or infectious disease, or one he has or should have reason to believe is so affected, or exposed, shall be civilly liable for all damages resulting from such sale or trade; provided that, nothing in this section shall prevent an individual who owns or has custody of sick animals from transporting sick or dead animals to a disease diagnostic laboratory operated or approved by the North Carolina Department of Agriculture if reasonable and proper precautions to prevent the exposure of other animals is taken by the owner or transporter thereof.

It shall be a Class 1 misdemeanor to remove before slaughter any ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for disease control purposes unless prior written authorization has been obtained from the State Veterinarian or his authorized representative. (1941, c. 263, s. 9; 1967, c. 894, s. 11; 1993, c. 539, s. 780; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the second paragraph inserted "Class 1" preceding "misdemeanor".

## § 106-417. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor; responsibility for health, etc., of animals.

Any person, firm, or corporation who shall knowingly violate any provisions set forth in this Article or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of this Article, shall be guilty of a Class 1 misdemeanor. A market operating under this Article shall not be responsible for the health or death of an animal sold through such market if the provisions of this Article have been complied with. (1941, c. 263, s. 12; 1943, c. 724, s. 6; 1967, c. 894, s. 14; 1993, c. 539, s. 781; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence substituted "Class 1 misdemeanor" for "misdemeanor, and shall be fined or imprisoned or both, in the discretion of the court".

## ARTICLE 35A.

## *North Carolina Livestock Prompt Pay Law.*

## § 106-418.7. Authority of Board of Agriculture, North Carolina Public Livestock Market Advisory Board and the Commissioner.

The Board of Agriculture shall establish rules and regulations pertaining to the purchase and payment of livestock sold in this State at public livestock markets. The North Carolina Public Livestock Market Advisory Board shall recommend rules and regulations pertaining to the administration of this Article to the Board of Agriculture for their consideration. The Commissioner is authorized to revoke any livestock market operator's license issued or to refuse to issue a livestock market license to any person as hereinafter provided upon satisfactory proof that said person has repeatedly violated any of the provisions of this Article or any of the rules and regulations made and promulgated thereunder; provided that no license shall be revoked or refused until the person, firm or corporation shall have first been given an opportunity to appear at a hearing before the Commissioner or his agent. Any person who is refused a license, or whose license is revoked by any order of the Commissioner, may appeal within 30 days from said order to the Superior Court of Wake County or the superior court of the county of his residence. (1973, c. 38, s. 7; 1989, c. 770, s. 25.)

**Effect of Amendments.** — The 1989 amendment, effective August 12, 1989, inserted "Market" preceding "Advisory Board" in the catchline and in the second sentence.

## ARTICLE 36.

## *Plant Pests.*

### § 106-420. Authority of Board of Agriculture to adopt regulations.

The Board of Agriculture is hereby authorized to adopt reasonable regulations to implement and carry out the purposes of this Article as to eradicate, repress and prevent the spread of plant pests (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State. The Board of Agriculture shall adopt regulations for eradicating such plant pests as it may deem capable of being economically eradicated, for repressing such as cannot be economically eradicated, and for preventing their spread within the State. Regulations may provide for quarantine of areas. It may also adopt reasonable regulations for preventing the introduction of dangerous plant pests from without the State, and for governing common carriers in transporting plants, articles or things liable to harbor such pests into, from and within the State. The Board is authorized, in order to control plant pests, to adopt regulations governing the inspection, certification and movement of nursery stock, (i) into the State from outside the State, (ii) within the State, and (iii) from within the State to points outside the State. The Board is further authorized to prescribe and collect a schedule of fees to be collected for its nursery inspection, nursery dealer certification, narcissus bulb inspection, plant pest inspection, and plant pest certification activities. (1957, c. 985; 1991, c. 442, s. 1.)

**Effect of Amendments.** — The 1991 amendment, effective June 28, 1991, at the end of this section, substituted "narcissus bulb inspection, plant pest inspection, and plant pest certification" for "and narcissus bulb inspection".

### § 106-423.1. (Effective October 1, 1994 — See editor's note) Criminal penalties; violation of laws or regulations.

If anyone shall attempt to prevent inspection of his premises as provided in the preceding sections, or shall otherwise interfere with the Commissioner of Agriculture, or any of his agents, while engaged in the performance of his duties under this Article, or shall violate any provisions of this Article or any regulations of the Board of Agriculture adopted pursuant to this Article, he shall be guilty of a Class 3 misdemeanor. Each day's violation shall constitute a separate offense. (1957, c. 985; 1993, c. 539, s. 782; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor and shall be fined not less than five ($5.00) nor more than fifty dollars ($50.00), or imprisoned for not less than 10 nor more than 30 days, for each offense".

## ARTICLE 38.

## *Marketing Cotton and Other Agricultural Commodities.*

### § 106-435. Fund for support of system; collection and investment.

In order to provide a sufficient indemnifying or guarantee fund to cover any loss not covered by the bonds hereinbefore mentioned, in order to provide the financial backing which is essential to make the warehouse receipt universally acceptable as collateral, and in order to provide that a State warehouse system intended to benefit all cotton growers in North Carolina shall be supported by the class it is designed to benefit, it is hereby declared: that on each bale of cotton ginned in North Carolina during the period from the ratification of this bill until June 30, 1922, twenty-five cents (25¢) shall be collected through the ginner of the bale and paid into the State treasury, to be held there as a special guarantee or indemnifying fund to safeguard the State warehouse system against any loss not otherwise covered. The State Tax Commission shall provide and enforce the machinery for the collection of this tax, which shall be held in the State treasury to the credit of the State warehouse system. Not less than ten per centum (10%) of the entire amount collected from the per bale tax shall be invested in United States government or farm loan bonds or North Carolina bonds, and the remainder may be invested in amply secured first mortgage notes or bonds to aid and encourage the establishment of warehouses operating under this system, and to aid and encourage the establishment of farm markets designed to serve the marketing, packaging, and grading needs for the sale and distribution of unprocessed farm commodities when adequate markets are not otherwise provided. Such investments shall be made by the Board of Agriculture, with the approval of the Governor and Attorney General: Provided, such first mortgages shall be for not more than one-half the actual value of the warehouse property covered by such mortgages, and run not more than 10 years: Provided further, that the interest received from all investments shall be available for appropriation for capital projects and nonrecurring expenditures as provided in the bill making the appropriation, and for the administrative expense of carrying into effect the provisions of this law, including the employment of such persons and such means as the State Board of Agriculture in its discretion may deem necessary: Provided further, that the guarantee fund, raised under the provisions of sections 4907 to 4925 of the Consolidated Statutes of 1919, shall become to all intents and purposes a part of guarantee fund to be raised under this law and subject to all the provisions hereof. The fund created by this section may be used for loans to owners of cotton gins to make improvements to gins to comply with federal and State air quality regulations, rules, and laws. The loans shall be secured and made under terms and conditions approved by the Board of Agriculture. Income earnings, including earnings from interest, may also be used by the Department of Agriculture for cotton promotion activities. (1919, c. 168, s. 5; 1921, c. 137, s. 5; Ex. Sess. 1921, c. 28; C.S., s. 4925(e); 1957, c. 1091; 1993, c. 561, s. 95(a); 1993 (Reg. Sess., 1994), c. 769, s. 26(a).)

**Editor's Note.** — Session Laws 1993, c. 561, which amended this section, in s. 95 provides in subsections (b) and (c):

"(b) Of the funds available in accumulated interest from the North Carolina Warehouse Act Fund, the sum of six hundred thousand dollars ($600,000) shall be deposited into the General Fund as nontax revenues for the 1993-94 fiscal year to be used to support expenditures for capital projects or nonrecurring expenditures as provided in this act.

"(c) There is appropriated from the North Carolina Warehouse Act Fund to the Department of Agriculture for fiscal year 1993-94 the sum of four hundred thousand dollars ($400,000) in accumulated interest, for non-recurring cotton promotion projects and activities in fiscal year 1993-94."

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occuring during the 1993-95 biennium."

**Effect of Amendments.** — The 1993 amendment, effective July 1, 1993, inserted "appropriation for capital projects and nonrecurring expenditures as provided in the bill making appropriation, and for" in the second proviso of the last sentence of this section following "investments shall be available for".

The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, added the last three sentences of subsection (a).

### § 106-439. (Effective October 1, 1994 — See editor's note) Leasing and licensing of property by superintendent; manner of operating warehouse system.

The State warehouse superintendent shall have the power to lease for State operation by State employees and for stated terms property for the warehousing by the State of cotton and other agricultural commodities. The State warehouse superintendent shall also have the power to lease from, and to license private or corporate warehouse property for the warehousing of such agricultural commodities under State license, general supervision and control, as a component unit of the State warehouse system. The terms and conditions of the State license shall prevail over the stated terms and conditions of the lease. In no event, however, regardless of the terms and conditions of the lease, shall any rental be paid by the State until the operating expenses of the leased warehouse facility shall have been paid from the income from the leased warehouse facility. The State shall not be responsible in any case for the payment of rental, except from the income of any leased warehouse facility in excess of the operating expenses of the facilities. The State warehouse superintendent shall fix the terms upon which private or corporate warehouses may be permitted to operate under State license and supervision, and obtain the benefits thereof, regardless of the terms and conditions of any lease agreement between the private or corporate warehouse and the State. It shall be his special duty to foster and encourage the erection of warehouses in the various cotton-growing and agricultural counties of the State for operation under the terms of this Article, and to provide an adequate system of inspection, and of rules, forms, and reports to insure the security of the system, such matters to be approved by the State Board of Agriculture. The violation of such rules shall be a Class 1 misdemeanor. Cotton and other agricultural products may be stored in such warehouses by any person owning them, and receive all of the benefits accruing from operation of such warehouses under direct State management, or as the case may be, under State license, general supervision and regulation, as component units of the State warehouse system and any person permitted to store cotton or other products in any such warehouse shall pay to the manager of the warehouse such sum or sums for rent or storage as may be agreed upon, subject to G.S. 106-432, by the manager, and such person desiring storage therein. (1919, c. 168, s. 10; 1921, c. 137, s. 9; C.S., s. 4925(i); 1941, c. 337, s. 3; 1965, c. 1029, s. 7; 1993, c. 539, s. 783; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the eighth sentence inserted "Class 1" preceding "misdemeanor".

## § 106-443. (Effective October 1, 1994 — See editor's note) Issuance of false receipt a felony; punishment.

The manager of any warehouse, or any agent, employee, or servant, who issues or aids in issuing a receipt for cotton or other agricultural commodity without knowing that such cotton or other agricultural commodity has actually been placed in the warehouse under the control of the manager thereof shall be guilty of a Class I felony, which may include a fine not exceeding 10 times the market value of the cotton or other agricultural commodity thus represented as having been stored. (1919, c. 168, s. 13; 1921, c. 137, s. 13; C.S., s. 4925(m); 1941, c. 337, s. 6; 1993, c. 539, s. 1297; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class I felony, which may include" for "felony, and upon conviction be punished for each offense by imprisonment in the State penitentiary for a period of not less than one or more than five years, or by".

## § 106-451. Numbering of cotton bales by public ginneries; public gin defined.

(a) Any person, firm or corporation operating any public cotton gin, that is, any cotton gin other than one ginning solely for the individual owner, owners, or operators thereof, shall hereafter be required to distinctly and clearly number, serially, each and every bale of cotton ginned, in one of the following ways:

(1) Attach a metal strip carrying the serial number to one of the ties of the bale and ahead of the tie lock, and so secure it that ordinary handling will not remove or disfigure the number.

(2) Impress the serial number upon one of the bands or ties around the bale.

Any person, firm or corporation failing or refusing to comply with this section shall be guilty of a Class 3 misdemeanor for each and every offense.

(b) Any person, firm or corporation buying a bale of cotton on which this number has: (i) been removed; (ii) defaced by cutting; (iii) or otherwise altered, unless a new metal strip is attached and impression made by the original gin ginning said bale or bales of cotton, shall be guilty of a Class 3 misdemeanor for each and every offense.

(c) Every public ginnery, as defined in subsection (a) of this section, shall keep a book in which shall be registered all cotton received at the gin to be ginned in the name of the owner of the cotton and the name of the person from whom the cotton is received for ginning. Any person giving false information for entry in this book shall be guilty of a Class 1 misdemeanor. There shall be furnished by the ginner for each bale of cotton ginned, to the owner thereof, a gin ticket bearing the name of the gin, the serial number of the bale prescribed by subsection (a) of this section, the weight of the bale and the name of the owner of the cotton. Such gin ticket shall be presented, for comparison with the serial number prescribed in subsection (a) of this section, at the time such bale is sold or offered for sale, as prima facie evidence of ownership thereof. (1923, c. 167; 1949, c. 824; 1994, Ex. Sess., c. 14, s. 53(b).)

**Editor's Note.** — Session Laws 1994, Extra Session, c. 14, s. 53(a), effective October 1, 1994, repealed Session Laws 1993, c. 539, s. 784, which would have amended this section effective October 1, 1994, by making the same changes as were made by Session Laws 1994, Extra Session, c. 14, s. 53(b), but were not effectuated as the language of s. 784 stated that "G.S. 106-451.1 reads as rewritten."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1994 Extra Session amendment by c. 14, s. 53(b), effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor for each and every offense" for "misdemeanor for each and every offense, and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not more than 30 days" in the last paragraph of subsection (a); substituted "Class 3 misdemeanor for each and every offense" for "misdemeanor for each and every offense and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not more than 30 days" in subsection (b); and inserted "Class 1" preceding "misdemeanor" in the second sentence of subsection (c).

## § 106-451.1. Purchasers of cotton to keep records of purchases.

Every cotton broker or other person buying cotton from the producer after it is ginned shall keep a record of such purchase for a period of one year from date of purchase. This record shall contain the name and address of the seller of the cotton, the date on which purchased, the weight or amount and the serial number of the bales provided for by G.S. 106-451. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor: Provided, any person, firm or corporation who purchases cotton which has been ginned outside this State shall be required to keep only so much of the records hereinabove specified as purchasers are required to keep by the law of the state where said cotton was ginned. (1945, c. 61; 1947, c. 977; 1994, Ex. Sess., c. 14, s. 54(b).)

**Editor's Note.** — Session Laws 1994, Extra Session, c. 14, s. 54(a), effective October 1, 1994, repealed Session Laws 1993, c. 539, s. 785, which would have amended this section effective October 1, 1994, by making the same changes as were made by Session Laws 1994, Extra Session, c. 14, s. 54(b), but were not effectuated as the language of s. 785 stated that "G.S. 106-451 reads as rewritten."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1994 Extra Session amendment by c. 14, s. 54(b), effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court" in the third sentence.

## ARTICLE 38A.

## *Cotton Warehouse Act.*

### § 106-451.28. (Effective October 1, 1994 — See editor's note) Violation a misdemeanor; fraudulent or deceptive acts.

Any person who shall violate any provision of this Article or who shall engage in any fraudulent or deceptive practice in the operation of a warehouse licensed under this Article shall be guilty of a Class 1 misdemeanor. (1987, c. 840, s. 1; 1993, c. 539, s. 786; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor, and upon conviction thereof shall be fined not more than ten thousand dollars ($10,000) or double the value of the cotton involved, whichever is more, or imprisoned for not more than two years, or both, in the discretion of the court".

## ARTICLE 39.

## *Leaf Tobacco Warehouses.*

### § 106-454. (Effective October 1, 1994 — See editor's note) Warehouse proprietor, etc., to render bill of charges; penalty.

The owner, operator, or person in charge of each warehouse shall render to each seller of tobacco at the warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charge or fees to be made or accepted. Any person, firm, corporation, or any employee thereof, violating the provisions of this section shall be guilty of a Class 3 misdemeanor for the first offense, and for the second or additional offenses a Class 2 misdemeanor. (1895, c. 81, ss. 3, 4; Rev., s. 3044; C.S., s. 5126; 1973, c. 1305; 1993, c. 539, s. 787; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the second sentence inserted "Class 3" and deleted "and fined not less than one hundred dollars ($100.00) nor more than two hundred fifty dollars ($250.00) and/or imprisoned not to exceed 30 days" preceding "for the first offense" and substituted "Class 2 misdemeanor" for "fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000) or imprisoned for not less than 30 days or more than six months, or both fined and imprisoned, in the discretion of the court".

## § 106-455. (Effective October 1, 1994 — See editor's note) Tobacco purchases to be paid for by cash or check to order.

The proprietor of each and every warehouse shall pay for all tobacco sold in said warehouse either in cash or by giving to the seller a check payable to his order in his full name or in his surname and initials and it shall be unlawful to use any other method. Every person, firm or corporation violating the provisions hereof shall, in addition to any and all civil liability which may arise by law, be guilty of a Class 3 misdemeanor. (1931, c. 101, s. 1; 1939, c. 348; 1993, c. 539, s. 788; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the second sentence substituted "Class 3 misdemeanor" for "misdemeanor and, upon conviction thereof, shall be punishable by fine not exceeding one hundred dollars ($100.00) or imprisonment not exceeding 30 days, or both, in the discretion of the court".

## ARTICLE 40.

## *Leaf Tobacco Sales.*

## § 106-464. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Any person, firm or corporation violating the provisions of G.S. 106-461 to 106-463 shall be guilty of a Class 3 misdemeanor. (1933, c. 467, s. 4; 1993, c. 539, s. 789; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor, and upon conviction shall be fined not more

than fifty dollars ($50.00) or imprisoned
for not more than 30 days".

### § 106-465. (Effective October 1, 1994 — See editor's note) Organization and membership of tobacco boards of trade; rules and regulations; fire insurance and extended coverage required; price fixing prohibited.

Tobacco warehousemen and the purchasers of leaf tobacco, at auction, on warehouse floors, are hereby authorized to organize, either as nonstock corporations, or voluntary associations, tobacco boards of trade in the several towns and cities in North Carolina in which leaf tobacco is sold on warehouse floors, at auction.

Such tobacco boards of trade as may now exist, or which may hereafter be organized, are authorized to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on the warehouse floors in the several towns and cities in North Carolina in which an auction market is situated.

Each tobacco board of trade organized pursuant to this section shall, on or before June 1, 1973, by regulation, require that all auction warehouse firms which are members of, or may hereafter request membership in, such board of trade for the purpose of displaying for sale and selling leaf tobacco, deposit with the board of trade prior to the market opening, a copy of a policy of fire insurance and extended coverage in a company licensed to do business in North Carolina to fully insure, as determined by the board of trade, the market value of the maximum volume of tobacco that will be weighed and left displayed for sale on said warehouse floor at any time during the marketing season. Warehouses using mechanized conveyor-line auction sales where tobacco is not displayed for sale on sales floor would be excluded from the requirement of this regulation.

In determining the market value and maximum volume of tobacco that will be weighed and placed on said warehouse floor at any one time, the board of trade shall use as criteria the prior season's official gross average price for that belt, as recorded by the North Carolina Department of Agriculture and the maximum limit of daily sales, as recommended by the currently functioning flue-cured and burley tobacco marketing organizations, applied to each warehouse based on the firm's pro rata share of the market's maximum limit daily sales opportunity, multiplied times the number of days of sales that said warehouse plans to place on sales floor at any one time, including any and all tobacco weighed and deposited with the warehouse as bailee for future sale. The data relating to the official average price and the maximum limits of daily sales shall be assembled and supplied by the North Carolina Commissioner of Agriculture or his representative to the board of trade in each tobacco market in North Carolina, at least 30 days prior to the opening of markets in each belt.

It shall be unlawful for any person, firm, or corporation to operate an auction sale in said market until said policy is so deposited with and approved by the board of trade. The board of trade shall enjoin the sale of tobacco by any warehouse firm that fails to so deposit a policy of fire insurance and extended coverage with the board.

The tobacco boards of trade in the several towns and cities in North Carolina are authorized to require as a condition to membership therein the applicants to pay a reasonable membership fee and the following schedule of maximum fees shall be deemed reasonable, to wit:

A membership fee of fifty dollars ($50.00) in those towns in which less than 3,000,000 pounds of tobacco was sold at auction between the dates of August 20, 1931, and May 1, 1932; a fee of one hundred dollars ($100.00) in those towns in which during said period of time more than 3,000,000 and less than 10,000,000 pounds of tobacco was sold; a fee of one hundred fifty dollars ($150.00) in those towns in which during said period of time more than 10,000,000 and less than 25,000,000 pounds of tobacco was sold; a fee of three hundred dollars ($300.00) in those towns in which during said period of time more than 25,000,000 pounds of tobacco was sold.

Membership, in good standing, in a local board of trade shall be deemed a reasonable requirement by such board of trade as a condition to participating in the business of operating a tobacco warehouse or the purchase of tobacco at auction therein.

Membership in the several boards of trade may be divided into two categories:

(1) Warehousemen;
(2) Purchasers of leaf tobacco other than warehousemen.

Purchasers of leaf tobacco may be: (i) participating or (ii) nonparticipating. The holder of a membership as a purchaser of leaf tobacco shall have the option of becoming, upon written notice to the board of trade, either a participating or a nonparticipating member. Individuals, partnerships, and/or corporations who are members of tobacco boards of trade, established under this section or coming within the provisions of this section, as nonparticipating members shall not participate in or have any voice or vote in the management, conduct, activities, allotment of sales time, and/or hours, the fixing of dates for the opening or closing of tobacco auction markets, or in any other manner or respect. Individuals, partnerships, and/or corporations who are such nonparticipating members in any of the several tobacco boards of trade shall not be responsible or liable for any of the acts, omissions or commissions of the several tobacco boards of trade.

It shall be unlawful and punishable as of a Class 1 misdemeanor for any bidder or purchaser of tobacco upon warehouse floors to refuse to take and pay for any basket or baskets so bid off from the seller when the seller has or has not accepted the price offered by the purchaser or bidder of other baskets. Any person suspended or expelled from a tobacco board of trade under the provisions of this section may appeal from such suspension to the superior court of the county in which said board of trade is located.

Nothing in this section shall authorize the organization of any association having for its purpose the control of prices or the making of rules and regulations in restraint of trade. (1933, c. 268; 1951, c. 383; 1973, c. 96; 1993, c. 539, s. 790; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of the next to last paragraph inserted "Class 1" preceding "misdemeanor".

## ARTICLE 41.

## *Dealers in Scrap Tobacco.*

### § 106-469. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Any person, firm or corporation violating any of the provisions of this Article shall be guilty of a Class 1 misdemeanor. (1937, c. 414, s. 4; 1993, c. 539, s. 791; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court".

## ARTICLE 44.

## *Unfair Practices by Handlers of Fruits and Vegetables.*

### § 106-501. (Effective October 1, 1994 — See editor's note) Violation of Article or rules made misdemeanor.

Any person who violates the provisions of this Article or the rules and regulations promulgated thereunder shall be guilty of a Class 1 misdemeanor. (1941, c. 359, s. 6; 1993, c. 539, s. 792; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor, and shall be punishable by a fine not more than five hundred dollars ($500.00) or by imprisonment for not more than one year, or both".

# ARTICLE 45.

# *Agricultural Societies and Fairs.*

## Part 1. State Fair.

### § 106-503. Board of Agriculture to operate fair.

(a) The State fair and other projects provided for in G.S. 106-502, shall be managed, operated and conducted by the Board of Agriculture established in G.S. 106-502. To that end, said Board of Agriculture shall, at its first meeting after the ratification of this section, take over said State fair, together with all the lands, buildings, machinery, etc., located thereon, now belonging to said State fair and shall operate said State fair and other projects with all the authority and power conferred upon the former board of directors, and it shall make such rules and regulations as it may deem necessary for the holding and conducting of said fair and other projects, and/or lease said fair properties so as to provide a State fair.

(b) The Board of Agriculture may adopt regulations establishing fees or charges for admission to the State Fairgrounds and for services provided incidental to the use of the State Fairgrounds.

(c) The Board of Agriculture, subject to the provisions of Chapter 146 of the General Statutes, may establish a schedule of rental rates for fair properties and specifications for the issuance of premiums so as to provide a State fair and other projects.

(d) The Board of Agriculture shall provide and maintain recycling bins for the collection and recycling of newspaper, aluminum cans, glass containers, and recyclable plastic beverage containers at the State Fairgrounds. (1931, c. 360, s. 3; 1959, c. 1186, s. 2; 1981, c. 495, s. 4; 1981 (Reg. Sess., 1982), c. 1359, s. 2; 1987, c. 827, s. 34; 1991, c. 336, s. 2.)

**Editor's Note.** — Session Laws 1991, c. 336, s. 5 provides: "This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each department and agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated to that department or agency."

**Effect of Amendments.** —

The 1991 amendment, effective July 1, 1991, inserted subsection designations (a) through (c) and added subsection (d).

## Part 3. Protection and Regulation of Fairs.

### § 106-514. (Effective October 1, 1994 — See editor's note) Unlawful entry on grounds a misdemeanor.

If any person, after having been expelled from the fairgrounds of any agricultural or horticultural society, shall offer to enter the same again without permission from such society; or if any person shall break over [open] the enclosing structure of said fairgrounds and enter the same, or shall enter the enclosure of said fairgrounds by means of climbing over, under or through the enclosing structure surrounding the same, or shall enter the enclosure through the gates without the permission of its gatekeeper or the proper officer of said fair association, he shall be guilty of a Class 3 misdemeanor. (1870-1, c. 184, s. 3; Code, s. 2795; 1901, c. 291; Rev., s. 3669; C.S., s. 4952; 1993, c. 539, s. 793; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor, and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days".

### § 106-515. (Effective October 1, 1994 — See editor's note) Assisting unlawful entry on grounds a misdemeanor.

It shall be unlawful for any person or persons to assist any other person or persons to enter upon the grounds of any fair association when an admission fee is charged, by assisting such other person or persons to climb over or go under the fence or by pulling off a plank or to enter the enclosed grounds by any trick or device or by passing out a ticket or a pass or in any other way. Any violation of this section shall be a Class 3 misdemeanor. (1915, c. 242, ss. 3, 4; C.S., s. 4953; 1993, c. 539, s. 794; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the second sentence substituted "Class 3 misdemeanor" for "misdemeanor and punishable by a fine not exceeding twenty dollars ($20.00) or imprisonment not exceeding 10 days".

## § 106-516.1. (Effective October 1, 1994 — See editor's note) Carnivals and similar amusements not to operate without permit.

Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, including menageries, merry-go-rounds, Ferris wheels, riding devices, circus and similar amusements and enterprises operated and conducted for profit, shall, prior to exhibiting in any county annually staging an agricultural fair, apply to the sheriff of the county in which the exhibit is to be held for a permit to exhibit. The sheriff of the county shall issue a permit without charge; provided, however, that no permit shall be issued if he shall find the requested exhibition date is less than 30 days prior to a regularly advertised agricultural fair and so in conflict with G.S. 105-37.1(d). Exhibition without a permit from the sheriff of the county in which the exhibition is to be held shall constitute a Class 1 misdemeanor: Provided, that nothing contained in this section shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a statewide or nationwide basis from holding fairs or tobacco festivals on any dates which they may select if such fairs or festivals have heretofore been held as annual events. (1953, c. 854; 1963, c. 1127; 1991 (Reg. Sess., 1992), c. 1030, s. 26; 1993, c. 539, s. 795; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1991 (Reg. Sess., 1992) amendment, effective July 24, 1992, substituted "G.S. 105-37.1(d)" for "G.S. 105-39" in the second sentence.

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the third sentence substituted "Class 1 misdemeanor" for "misdemeanor and be punished by fine or imprisonment, or both, in the discretion of the court".

## § 106-518. (Effective October 1, 1994 — See editor's note) Unlicensed vending, etc., near fairs a misdemeanor.

Any person violating the provisions of G.S. 106-516 and 106-517 shall be guilty of a Class 3 misdemeanor. (1915, c. 242, s. 7; C.S., s. 4956; 1993, c. 539, s. 796; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor, punishable by a fine not to exceed fifty dollars ($50.00) or imprisonment not to exceed 30 days, at the discretion of the court".

## Part 4. Supervision of Fairs.

### § 106-520.7. (Effective October 1, 1994 — See editor's note) Violations made misdemeanor.

Any person who violates any provision of G.S. 106-520.1 through G.S. 106-520.6 is guilty of a Class 1 misdemeanor. (1949, c. 829, s. 1; 1993, c. 539, s. 797; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor punishable by a fine or imprisonment in the discretion of the court".

## ARTICLE 49.

## *Poultry; Hatcheries; Chick Dealers.*

### § 106-549. (Effective October 1, 1994 — See editor's note) Violation a misdemeanor.

Any person, firm or corporation who shall willfully violate any provision of this Article or any rule or regulation duly established by authority of this Article, shall be guilty of a Class 2 misdemeanor. (1945, c. 616, s. 11; 1969, c. 464; 1993, c. 539, s. 798; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and punishable by a fine not over five hundred dollars ($500.00) and imprisonment for not over six months or both fine and imprisonment".

## ARTICLE 49B.

## *Meat Inspection Requirements; Adulteration and Misbranding.*

### § 106-549.15. Definitions.

As used in this Article, except as otherwise specified, the following terms shall have the meanings stated below:

(1) "Adulterated" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

b.1. If it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Commissioner, make such article unfit for human food;

2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

4. If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not adulterated under clause 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive or color additive in or on such article is prohibited by order of the Commissioner in establishments at which inspection is maintained under this Article;

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

e. If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

i. If it is margarine containing animal fat and any of the raw material used therein consist in whole or in part of any filthy, putrid, or decomposed substance.

(2) "Animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines.

(3) "Authorized representative" means the Director of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture.

(4) "Board" means the North Carolina Board of Agriculture.

(5) "Capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.

(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.

(7) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.

(8) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584).

(9) "Firm" means any partnership, association, or other unincorporated business organization.

(10) "Intrastate commerce" means commerce within this State.

(11) "Label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.

(12) "Labeling" means all labels and other written, printed, or graphic matter (i) upon any article or any of its containers or wrappers, or (ii) accompanying such article.

(13) "Meat broker" means any person, firm, or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation.

(14) "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, goats, or fallow deer, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the Board under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, and goats.

(15) "Misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

a. If its labeling is false or misleading in any particular;

b. If it is offered for sale under the name of another food;

c. If it is imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

d. If its container is so made, formed, or filled as to be misleading;

e. If in a package or other container unless it bears a label showing (i) the name and place of business of the manufacturer, packer, or distributor; and (ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (ii) of this paragraph e, reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the Board;

f. If any word, statement, or other information required by or under authority of this or the subsequent Article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under G.S. 106-549.21 unless (i) it conforms to such definition and standard, and (ii) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under G.S.

106-549.21, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

i. If it is not subject to the provisions of paragraph g, unless its label bears (i) the common or usual name of the food, if any there be, and (ii) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner, be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause (ii) of this paragraph i is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this paragraph k is impracticable, exemptions shall be established by regulations promulgated by the Board; or

*l.* If it fails to bear, directly thereon or on its container, as the Board may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(16) "Official certificate" means any certificate prescribed by regulations of the Board for issuance by an inspector or other person performing official functions under this or the subsequent Article.

(17) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.

(18) "Official inspection legend" means any symbol prescribed by regulations of the Board showing that an article was inspected and passed in accordance with this or the subsequent Article.

(19) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Board to identify the status of any article or animal under this or the subsequent Article.

(20) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(21) "Prepared" means slaughtered, canned, salted, smoked, rendered, boned, cut up, or otherwise manufactured or processed.

(21a) "Ratite" means a bird whose breastbone is smooth so that flight muscles cannot attach, such as an ostrich, an emu, and a rhea. These birds are subject to the provisions of this Article and Article 49C to the same extent as any other meat food product.

(22) "Renderer" means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines, except rendering conducted under inspection under this Article. (1969, c. 893, s. 1; 1991, c. 317, ss. 4, 5; 1993, c. 311, s. 1.)

**Effect of Amendments.** — The 1991 amendment, effective June 19, 1991, in subdivision (14) deleted "or" preceding "goats" and inserted "or fallow deer," and inserted "fallow deer" in subdivision (22).

The 1993 amendment, effective July 9, 1993, added subdivision (21a).

## § 106-549.17. Inspection of animals before slaughter; humane methods of slaughtering.

(a) For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this State in which slaughtering and preparation of meat and meat food products of such animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Board as herein provided for.

(b) For the purpose of preventing the inhumane slaughtering of livestock, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this law. The Commissioner may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if the Commissioner finds that any cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with subsection (c) of this section until the establishment furnishes assurances satisfactory to the Commissioner that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.

(c) Either of the following two methods of slaughtering of livestock and handling of livestock in connection with slaughter are found to be humane:

(1) In the case of cattle, calves, fallow deer, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(2) By slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering. (1969, c. 893, s. 3; 1981, c. 376, s. 1; 1991, c. 317, s. 6.)

**Effect of Amendments.** — The 1991 amendment, effective June 19, 1991, inserted "fallow deer" in four places in subsection (a), in two places in subsection (b), and in subdivision (c)(1).

## § 106-549.18. Inspection; stamping carcass.

For the purposes hereinbefore set forth the Commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this State in which such articles are prepared for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as "Inspected and Passed"; and said inspectors shall label, mark, stamp, or tag as "Inspected and Condemned," all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to [do] so destroy any such condemned carcass or part thereof. (1969, c. 893, s. 4; 1991, c. 317, s. 7.)

**Effect of Amendments.** — The 1991 amendment, effective June 19, 1991, inserted "fallow deer" and substituted "tag" for "tax."

## § 106-549.19. Application of Article; place of inspection.

The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this Article is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Commissioner or his authorized representative may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this Article is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this and the subsequent Article. (1969, c. 893, s. 5; 1991, c. 317, s. 8.)

**Effect of Amendments.** — The 1991 amendment, effective June 19, 1991, inserted "fallow deer" in the first sentence.

## § 106-549.22. Rules and regulations of Board.

The Commissioner or his authorized representative shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and the Board shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner or his authorized representative shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "North Carolina Department of Agriculture Inspected and Passed." (1969, c. 893, s. 8; 1991, c. 317, s. 9.)

**Effect of Amendments.** — The 1991 amendment, effective June 19, 1991, inserted "fallow deer."

## § 106-549.23. Prohibited slaughter, sale and transportation.

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals:

(1) Slaughter any of these animals or prepare any of these articles which are capable of use as human food, at any establishment preparing any such articles for intrastate commerce except in compliance with the requirements of this and the subsequent Article;

(2) Slaughter, or handle in connection with slaughter, any such animals in any manner not in accordance with G.S. 106-549.17(c) of this Article;

(3) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:

a. Any of these articles which (i) are capable of use as human food and (ii) are adulterated or misbranded at the time of sale, transportation, offer for sale or transportation, or receipt for transportation; or

b. Any articles required to be inspected under this Article unless they have been so inspected and passed; or

(4) Do, with respect to any of these articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing the articles to be adulterated or misbranded. (1969, c. 893, s. 9; 1981, c. 376, s. 2; 1991, c. 317, s. 10.)

**Effect of Amendments.** — The 1991 amendment, effective June 19, 1991, inserted "fallow deer" in the introductory language.

## § 106-549.25. Slaughter, sale and transportation of equine carcasses.

No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived. When required by the Commissioner or his authorized representative, with respect to establishments at which inspection is maintained under this Article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, fallow deer, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared. (1969, c. 893, s. 11; 1991, c. 317, s. 11.)

**Effect of Amendments.** — The 1991 amendment, effective June 19, 1991, inserted "fallow deer."

### § 106-549.26. (Effective October 1, 1994 — See editor's note) Inspection of establishment; bribery of or malfeasance of inspector.

The Commissioner or his authorized representative shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this and the subsequent Article and by the rules and regulations to be prescribed by said Board and said Board shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this and the subsequent Article, and all inspections and examinations made under this Article shall be such and made in such manner as described in the rules and regulations prescribed by said Board not inconsistent with the provisions of this Article and as directed by the Commissioner or his authorized representative. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this and the subsequent Article or by the rules and regulations of the Board or by the Commissioner or his authorized representative any money or other thing of value, with intent to influence said inspector, or other officer or employee of this State in the discharge of any duty herein provided for, shall be deemed guilty of a Class I felony which may include a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000); and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this Article who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a Class I felony and shall, upon conviction thereof, be summarily discharged from office and may be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000). (1969, c. 893, s. 12; 1991, c. 317, s.12; 1993, c. 539, s. 1298; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1991

amendment, effective June 19, 1991, inserted "fallow deer" in the first sentence.

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class I felony which may include" for "felony and, upon conviction thereof, shall be punished by", and deleted "and by imprisonment for not less than one year nor more than three years" near the middle of the last sentence, and inserted "Class I", substituted "may" for "shall", and deleted "and by imprisonment for not less than one year nor more than three years" near the end of the last sentence.

## § 106-549.27. Exemptions from Article.

(a) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not

(1) Apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor

(2) To the custom slaughter by any person, firm, or corporation of cattle, sheep, swine, fallow deer, or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: Provided, that all carcasses, parts thereof, meat and meat food products derived from custom slaughter shall be identified as required by the Commissioner, during all phases of slaughtering, chilling, cooling, freezing, packing, meat canning, rendering, preparation, storage and transportation; provided further, that the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, meat or meat food products of any cattle, sheep, swine, goats, fallow deer, or equines, capable of use as human food, unless the carcasses, parts thereof, meat or meat food products have been inspected and passed and are identified as having been inspected and passed by the Commissioner or the United States Department of Agriculture.

(b) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments. Meat food products coming under this subsection may be stored, processed, or prepared at any freezer locker plant provided such meat food products are identified and kept separate and apart from other meat food products bearing the official mark of inspection while in the freezer locker plant.

(c) In order to accomplish the objectives of this Article, the Commissioner shall exempt any other operations which the Commissioner shall determine would best be exempted to further the purposes of this Article, to the extent such exemptions conform to the Federal Meat Inspection Act and the regulations thereunder.

(d) **(Effective October 1, 1994 — See editor's note)** The slaughter of animals and preparation of articles referred to in paragraphs (a) (2) and (b) of this section shall be conducted in accordance with such sanitary conditions as the Board may by regulations prescribe. Willful violation of any such regulation is a Class 2 misdemeanor.

(e) The adulteration and misbranding provisions of this title, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this section. (1969, c. 893, s. 13; 1971, c. 54, ss. 1, 2; 1991, c. 317, s. 13; 1993, c. 539, s. 799; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1991 amendment, effective June 19, 1991, substituted "transportation" for "transporation" in subdivision (a)(1) and inserted references to fallow deer in two places in subdivision (a)(2).

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the second sentence of subsection (d) substituted "Class 2 misdemeanor" for "misdemeanor and punishable by a fine of not over five hundred dollars ($500.00) and imprisonment for not over six months or both fine and imprisonment".

## § 106-549.28. (Effective October 1, 1994 — See editor's note) Regulation of storage of meat.

The Board may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Board deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Willful violation of any such regulation is a Class 2 misdemeanor. (1969, c. 893, s. 14; 1991, c. 317, s. 14; 1993, c. 539, s. 800; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1991 amendment, effective June 19, 1991, inserted "fallow deer."

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentence substituted "Class 2 misdemeanor" for "misdemeanor and punishable by a fine of not over five hundred dollars ($500.00) and imprisonment for not over six months or both fine and imprisonment".

## ARTICLE 49C.

## *Federal and State Cooperation as to Meat Inspection; Implementation of Inspection.*

### § 106-549.34. (Effective October 1, 1994 — See editor's note) Interference with inspector.

Any person who willfully assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this or the previous Article shall be guilty of a Class 2 misdemeanor. For the purposes of this section, "impede," "oppose," and "intimidate," or "interfere" shall include, but not be limited to, the use of profane and indecent language, or any act or gesture, verbal or nonverbal, which tends to cast disrespect on an inspector or the Meat and Poultry Inspection Service. Whoever, in the commission of any such acts, uses a deadly weapon, shall be guilty of a Class 1 misdemeanor. (1969, c. 893, s. 20; 1993, c. 539, s. 801; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence substituted "Class 2 misdemeanor" for "misdemeanor and fined not more than five hundred dollars ($500.00) or imprisoned for not more than six months or both fined and imprisoned" and in the last sentence substituted "Class 1 misdemeanor" for "fined not less than two hundred fifty dollars ($250.00) or not more than one thousand dollars ($1,000) or imprisoned not less than one year or not more than two years, or both".

### § 106-549.36. Gathering information; reports required; use of subpoena.

(a) The Commissioner shall also have power —

(1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person, firm, or corporation engaged in intrastate commerce, and the relation thereof to other persons, firms, or corporations;

(2) To require, by general or special orders, persons, firms, and corporations engaged in intrastate commerce, or any class of them, or any of them to file with the Commissioner, in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commis-

sioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons, firms, and corporations, of the person, firm, or corporation filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner.

(b) For the purposes of this and the previous Article the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, firm, or corporation being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person, firm, or corporation relating to any matter under investigation. The Commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(1) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena the Commissioner may invoke the aid of any court designated in G.S. 106-549.33 in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(2) Any of the courts designated in G.S. 106-549.33 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, firm, or corporation, issue an order requiring such person, firm, or corporation, to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Upon the application of the Attorney General of this State at the request of the Commissioner, the superior court shall have jurisdiction to issue writs of mandamus commanding any person, firm, or corporation to comply with the provisions of this or the previous Article or any order of the Commissioner made in pursuance thereof.

(4) The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this Article at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commissioner as hereinbefore provided.

(5) Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.

(6) No person, firm, or corporation shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or in obedience to the subpoena of the Commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceedings, criminal or otherwise, based upon or growing out of any alleged violation of this or the previous Article, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c) **(Effective October 1, 1994 — See editor's note)** Any person, firm, or corporation that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of a Class 2 misdemeanor.

(1) Any person, firm, or corporation that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Article, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, firm, or corporation subject to this Article or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person, firm, or corporation, or that shall willfully remove out of the jurisdiction of this State, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, firm, or corporation or that shall willfully refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any such person, firm, or corporation in his possession or within his control, shall be deemed guilty of a Class 2 misdemeanor.

(2) If any person, firm, or corporation required by this Article to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for 30 days after notice of such default, such person, firm, or corporation shall forfeit

to this State the sum of one hundred dollars ($100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the superior court where the person, firm, or corporation has his or its principal office or in Wake County. It shall be the duty of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the amount recovered in such action.

(3) Any officer or employee of this State who shall make public any information obtained by the Commissioner without his authority, unless directed by a court, shall be deemed guilty of a Class 2 misdemeanor. (1969, c. 893, s. 22; 1993, c. 539, s. 802; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the introductory language of subsection (c) substituted "Class 2 misdemeanor" for "misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than six months or by both such fine and imprisonment"; in the last sentence of subdivision (c)(1) substituted "a Class 2 misdemeanor" for "an offense and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not more than five hundred dollars ($500.00) or to imprisonment for a term of not more than six months or to both such fine and imprisonment"; and in subdivision (c)(3) substituted "Class 2 misdemeanor" for "misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars ($500.00) or by imprisonment, not exceeding six months or by both such fine and imprisonment, in the discretion of the court".

## § 106-549.39. Hours of inspection; overtime work; fees.

(a) Overtime Fees. — The Commissioner is not required to furnish meat inspection services during the following times unless the establishment under inspection pays the Department for the services:

(1) More than eight hours in a day.
(2) More than 40 hours in a calendar week.
(3) On a Sunday.
(4) On a legal holiday.

The Commissioner may establish a fee at an hourly rate to be paid by an establishment inspected during the times listed above. The fee shall be credited to the Department as a departmental receipt and applied to the cost of inspecting the establishment.

(b) Ratite Fees. — The Commissioner may establish a fee at an hourly rate to be paid by an establishment preparing ostriches or other ratites as a meat food product. The fee shall be credited to the Department as a departmental receipt and applied to the cost of inspecting ostriches and other ratites. (1969, c. 893, s. 27(a); 1993, c. 311, s. 2.)

**Effect of Amendments.** — The 1993 amendment, effective July 9, 1993, rewrote this section.

## ARTICLE 49D.

## *Poultry Products Inspection Act.*

### § 106-549.55. Labeling standards; false and misleading labels.

(a) All poultry products inspected at any official establishment under the authority of this Article and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, on their shipping containers and immediate containers as the Commissioner may require, the information required under subdivision (17) of G.S. 106-549.51. In addition, the Commissioner whenever he determines such action is practicable and necessary for the protection of the public, may require nonconsumer packaged carcasses at the time they leave the establishment to bear directly thereon in distinctly legible form any information required under such subdivision (17).

(b) The Board, whenever it determines such action is necessary for the protection of the public, may prescribe:

(1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marking or otherwise labeling any articles or poultry subject to this Article;

(2) Definitions and standards of identity or composition for articles subject to this Article and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug and Cosmetic Act, or under the Federal Poultry Products Inspection Act, and there shall be consultation between the Commissioner or his authorized representative and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(c) No article subject to this Article shall be sold or offered for sale by any person in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Commissioner, are permitted.

(d) If the Commissioner has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this Article is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. A person who uses or proposes to use the marking, labeling, or container and who does not accept the determination of the Commissioner may commence a contested case under G.S. 150B-23. If directed by the Commissioner, the marking, labeling, or container may not be used pending a final decision. (1971, c. 677, s. 8; 1973, c. 1331, s. 3; 1987, c. 827, s. 36; 1989, c. 770, s. 26.)

**Effect of Amendments.** — The 1989 amendment, effective August 12, 1989, substituted "subdivision (17)" for "subdivision (1)" in two places in subsection (a).

## § 106-549.68. Powers of Commissioner; subpoenas; mandamus; self-incrimination; penalties.

(a) The Commissioner shall also have power:

(1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and the relation thereof to other persons;

(2) To require, by general or special orders, persons engaged in intrastate commerce, or any class of them, or any of them to file with the Commissioner, in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons of the person filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner.

(b)(1) For the purposes of this Article the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The Commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena the Commissioner may invoke the aid of any court designated in G.S. 106-549.67 in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(3) Any of the courts designated in G.S. 106-549.67 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter

in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) Upon the application of the Attorney General of this State at the request of the Commissioner, the superior court shall have jurisdiction to issue writs or [of] mandamus commanding any person to comply with the provisions of this Article or any order of the Commissioner made in pursuance thereof.

(5) The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this Article at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commissioner as hereinbefore provided.

(6) Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.

(7) No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or in obedience to the subpoena of the Commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Article, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c)(1) **(Effective October 1, 1994 — See editor's note)** Any person that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of a Class 1 misdemeanor.

(2) **(Effective October 1, 1994 — See editor's note)** Any person that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Article, or that shall willfully make, or

cause to be made, any false entry in any account, record, or memorandum kept by any person subject to this Article or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of any person subject to this Article or that shall willfully remove out of the jurisdiction of this State, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, or that shall willfully refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this Article in his or its possession or within his or its control, shall be deemed guilty of a Class 1 misdemeanor.

(3) If any person required by this Article to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for 30 days after notice of such default, such person shall forfeit to this State the sum of one hundred dollars ($100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the superior court where the person has his or its principal office or in any county in which he or it shall do business. It shall be the duty of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the amount recovered in such action.

(4) **(Effective October 1, 1994 — See editor's note)** Any officer or employee of this State who shall make public any information obtained by the Commissioner without his authority, unless directed by a court, shall be deemed guilty of a Class 1 misdemeanor. (1971, c. 677, s. 21; 1993, c. 539, ss. 803-805; 1994, Ex. Sess., c. 14, s. 55; c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subdivision (c)(1) substituted "Class 1 misdemeanor" for "an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine not less than one thousand dollars ($1,000) or by imprisonment for not more than one year, or by both such fine and imprisonment"; in subdivision (c)(2) substituted "Class 1 misdemeanor" for "misdemeanor and shall be subject upon conviction in any court of competent jurisdiction to a fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000), or to imprisonment for a term of not more than two years, or to both such fine and imprisonment"; and in subdivision (c)(4) substituted "Class 1 misdemeanor" for "misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two thousand dollars ($2,000), or by imprisonment, not exceeding one year, or by both such fine and imprisonment, in the discretion of the court".

The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses occurring on or after that date, inserted "a" preceding "Class 1 misdemeanor" in subdivision (c)(1).

## ARTICLE 49H.

## *Production and Sale of Fallow Deer.*

### § 106-549.97. Regulation of fallow deer by Department of Agriculture; certain authority of North Carolina Wildlife Resources Commission not affected.

(a) The Department of Agriculture shall regulate the production and sale of fallow deer for food purposes. The Board of Agriculture shall adopt rules for the production and sale of fallow deer for food purposes in such a manner as to provide for close supervision of any person, firm, or corporation producing and selling fallow deer for food purposes.

As used in this section, "fallow deer" (Dama dama spp.) means a small European deer raised commercially for production and sale for food purposes.

(b) The North Carolina Wildlife Resources Commission shall regulate the possession and transportation of live fallow deer and may adopt rules to prevent the release or escape of fallow deer upon finding that it is necessary to protect live fallow deer or to prevent damage to the native deer population or its habitat. (1991, c. 317, s. 1.)

**Editor's Note.** — Session Laws 1991, c. 317, s. 15 made this Article effective upon ratification. The act was ratified June 19, 1991.

### § 106-549.98. Inspection fees.

The Commissioner may establish a fee at an hourly rate to be paid by the owner, proprietor, or operator of each slaughtering, meat-canning, salting, packing, rendering, or similar establishment for the purpose of defraying the expenses incurred in the inspection of fallow deer as required by Article 49B of Chapter 106 of the General Statutes. (1991, c. 317, s. 1.)

## ARTICLE 50.

## *Promotion of Use and Sale of Agricultural Products.*

### § 106-550. Policy as to promotion of use of, and markets for, farm products.

It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the agricultural products of tobacco, strawberries, strawberry plants, or porcine animals, with respect to which separate provisions have been made. (1947, c. 1018, s. 1; 1951, c. 1172, s. 1; 1957, cc. 260, 1352; 1989 (Reg. Sess., 1990), c. 1027, s. 1.1; 1991, c. 605, s. 2.)

**Effect of Amendments.** — The 1989 (Reg. Sess., 1990) amendment, effective July 27, 1990, in the last sentence, substituted "products of tobacco, strawberries, or strawberry plants," for "product of tobacco" and substituted "provisions have" for "provision and enactment has heretofore."

The 1991 amendment, effective July 9, 1991, deleted "swine" near the beginning of the section, and deleted "or" preceding "strawberry plants" and inserted "or porcine animals" near the end of the section.

### § 106-555.1. Official State board for federal assessment programs; no subsequent referenda required.

For the purpose of any federal commodity assessment program, the producers' agency certified by the Board of Agriculture pursuant to G.S. 106-555 shall be deemed to be the official State board for such commodity. No subsequent referenda shall be required under this Article in order for such producers' agency to maintain its status as the official State board for the purposes of such federal commodity assessment program. (1991, c. 99, s. 1.)

**Editor's Note.** — Session Laws 1991, c. 99, s. 2 made this section effective upon ratification. The act was ratified May 22, 1991.

## ARTICLE 50A.

## *Promotion of Agricultural Research and Dissemination of Findings.*

### § 106-568.2. Policy as to referendum and assessment.

It is declared to be in the public interest and highly advantageous to the economic development of the State that farmers, producers, and growers of agricultural commodities using commercial feed and/or fertilizers or their ingredients be permitted by referendum held among themselves to levy upon themselves an assessment of ten cents (10¢) per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and land plaster) to provide funds through the Agricultural Foundation to supplement the established program of agricultural research and dissemination of research facts.

It is further declared to be in the public interest and highly advantageous to the economic development of the State that tobacco producers be permitted by referendum to levy upon themselves an assessment not to exceed ten cents (10¢) per hundred pounds of tobacco marketed to provide funds through the North Carolina Tobacco Research Commission for research and dissemination of research facts concerning tobacco. (1951, c. 827, s. 2; 1981, c. 181, s. 1; 1991, c. 102, s. 1.)

**Effect of Amendments.** — The 1991 amendment, effective May 22, 1991, deleted "further" preceding "declared to be" in the first sentence of the first paragraph, and added the second paragraph.

### § 106-568.3. Action of Board of Agriculture on petition for referendum; creation of the Tobacco Research Commission.

(a) The State Board of Agriculture, upon a petition being filed with it so requesting and signed by the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall examine such petition and upon finding that it complies with the provisions of this Article shall authorize the holding of a referendum as hereinafter set out and the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of the commodities herein mentioned a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this Article. Provided, that the petition for a tobacco referendum shall be signed by and, once approved, shall authorize the holding of a referendum by the governing boards of the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Tobacco Foundation, Inc., and the Tobacco Growers Association of North Carolina, Incorporated.

(b) There is hereby created a North Carolina Tobacco Research Commission within the Department of Agriculture. The Commission shall consist of the Commissioner of Agriculture, or his designee; the President of the North Carolina Farm Bureau Federation, Inc., or his designee; the President of the Tobacco Growers Association of North Carolina, Incorporated, or his designee; the Master of the North Carolina State Grange, or his designee; and, the President of the North Carolina Tobacco Foundation, Inc., or his designee. (1951, c. 827, s. 3; 1991, c. 102, s. 2.)

**Effect of Amendments.** — The 1991 amendment, effective May 22, 1991, designated the first paragraph as subsection (a), added the present second sentence of subsection (a), and added subsection (b).

## § 106-568.4. By whom referendum to be managed; announcement.

The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall arrange for and manage any referendum conducted under the provisions of this Article but shall, 60 days before the date upon which it is to be held, fix, determine, and publicly announce in each county the date, hours, and polling places in that county for voting in such referendum, the amount and basis proposed to be collected, the means by which such assessment shall be collected as authorized by the growers and producers, and the general purposes for which said funds so collected shall be applied. Provided, that the governing boards of the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Tobacco Foundation, Inc., and the Tobacco Growers Association of North Carolina, Incorporated, shall arrange for and manage any referendum for tobacco poundage assessments under the provisions of this Article. (1951, c. 827, s. 4; 1991, c. 102, s. 3.)

**Effect of Amendments.** — The 1991 amendment, effective May 22, 1991, added the last sentence.

## § 106-568.6. Determination and notice of date, area, hours, voting places, etc.

The three organizations herein designated to hold such referendum shall fix the date, area, hours, voting places, rules and regulations with respect to the holding of such referendum and cause the same to be published in the press of the State at least 60 days before holding such referendum and shall certify such information to the State Commissioner of Agriculture and to each of the farm organizations of the State. Such notice, so published and furnished to the several agencies, shall contain, in addition to the other information herein required, a statement of the amount of annual assessment proposed to be levied, and the purposes for which such assessment shall be applied. Provided, that the four organizations designated to hold the referendum for tobacco poundage assessments shall perform the functions set forth in this section. (1951, c. 827, s. 6; 1991, c. 102, s. 4.)

**Effect of Amendments.** — The 1991 amendment, effective May 22, 1991, added the last sentence.

## § 106-568.7. Preparation and distribution of ballots; poll holders; canvass and announcement of results.

The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall prepare and distribute in advance of such referendum all necessary ballots and shall under rules and regulations, adopted and promulgated by the organizations holding such referendum, arrange for the necessary poll holders and shall, within 10 days after the date of such referendum, canvass and publicly declare the results thereof. Provided, that for the tobacco poundage assessment referendum, the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Tobacco Foundation, Inc., and the Tobacco Growers Association of North Carolina, Incorporated, shall perform the functions set forth in this section. (1951, c. 827, s. 7; 1991, c. 102, s. 5.)

**Effect of Amendments.** — The 1991 amendment, effective May 22, 1991, added the last sentence.

## § 106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.

(a) Fertilizer and feed assessments. In the event two-thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of six years under rules, regulations, and methods as provided for in this Article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-284.40 and 106-671. The Commissioner shall then remit said ten cents (10¢) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of ten cents (10¢) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers.

Any commercial feed excluded from the payment of the inspection fee required by G.S. 106-284.40 shall nevertheless be subject to the assessment provided for by this Article and to quarterly tonnage reports to the Department of Agriculture as provided for in G.S. 106-284.40(c).

(b) Tobacco Poundage Assessments. In the event two-thirds or more of the eligible farmers and producers participating in the tobacco referendum vote in favor of the tobacco poundage assessment authorized under this Article, then said assessments shall be collected for a period of six years under rules, regulations, and methods adopted by the North Carolina Tobacco Research Commission. The North Carolina Tobacco Research Commission is exempt from the provisions of Chapter 150B of the General Statutes.

The assessments collected shall be remitted to the Department of Agriculture to be expended under the direction of the Tobacco Research Commission for research and dissemination of research facts concerning tobacco. Any person that receives assessment funds from the Tobacco Research Commission shall file quarterly written reports with the Tobacco Research Commission on the receipt and expenditure of assessment funds. (1951, c. 827, s. 8; 1967, c. 631, s. 1; 1975, c. 646; 1981, c. 181, s. 1; 1989, c. 770, s. 27; 1991, c. 102, s. 6.)

**Effect of Amendments.** — The 1989 amendment, effective August 12, 1989, substituted "G.S. 106-284.40 and 106-671" for "G.S. 106-50.6 and 106-99" in the third sentence of the first paragraph.

The 1991 amendment, effective May 22, 1991, inserted the catchline "Fertilizer and feed assessments" at the beginning of subsection (a), and added subsection (b).

## § 106-568.9. Refunds to farmers.

In the event such a referendum is carried in the affirmative and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the duly certified agencies conducting the same, any farmer upon whom and against whom any such assessment shall have been added and collected under the provisions of this Article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said North Carolina Agricultural Foundation, Inc., a refund of such amount so collected from such farmer or producer provided such demand for refund is made in writing within 30 days from the date of which said assessment is collected from such farmer or producer. Provided, that the Department of Agriculture shall make tobacco poundage assessment refunds to tobacco farmers when such demand for refund is made in writing by the tobacco farmer within 30 days of the close of the marketing season. (1951, c. 827, s. 9; 1991, c. 102, s. 7.)

**Effect of Amendments.** — The 1991 amendment, effective May 22, 1991, added the last sentence.

## § 106-568.10. Subsequent referenda; continuation of assessment.

If the assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall have full power and authority to call another referendum for the purposes herein set out in the next succeeding year on the question of the annual assessment for six years. In the event the assessment carried in a referendum by two-thirds or more of the eligible farmers participating therein, such assessment shall be levied annually for the six years set forth in the call for such referendum and a new referendum may be called and conducted during the sixth year of such period on the question of whether or not such assessment shall be continued for the next ensuing six years. Provided, that if the tobacco poundage assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Tobacco Foundation, Inc., and Tobacco Growers Association of North Carolina, Incorporated, may call another referendum in the next succeeding year on the question of the annual assessment for six years. If the tobacco assessment carried in a referendum by two-thirds or more of the eligible farmers participating therein, the assessment shall be levied annually for the six years set forth in the call for the referendum and a new referendum may be called and conducted during the sixth year of the period on the question of whether or not the assessment shall be continued for the next ensuing six years. (1951, c. 827, s. 10; 1967, c. 631, s. 2; 1991, c. 102, s. 8.)

**Effect of Amendments.** — The 1991 amendment, effective May 22, 1991, added the last two sentences.

## ARTICLE 50C.

## *Promotion of Sale and Use of Tobacco.*

## § 106-568.20. Referendum on assessment for next three years.

During the year 1989 or 1990 upon the exact date in such year as may be determined in the manner hereinafter set forth and under rules and regulations as established under the provisions of this Article, there shall be held in every county in North Carolina in which flue-cured tobacco is produced a referendum to be participated in by all farmers engaged in the production of flue-cured tobacco in which referendum said farmers shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years 1989, 1990 and 1991, or 1990, 1991, and 1992, such amount as may have been theretofore or as may be thereafter determined by the Board of Directors of Tobacco Associates, Inc., but not more than four dollars ($4.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina. Those farmers entitled to share in the crop of flue-cured tobacco or in the proceeds of such crop because of sharing in the risk of production shall be deemed to be engaged in the production of such tobacco. (1959, c. 309, s. 3; 1987, c. 294, s. 1; 1989, c. 349, s. 1.)

**Effect of Amendments.** —
The 1989 amendment, effective June 19, 1989, in the first sentence, substituted "the year 1989 or 1990" for "the year 1988 or 1989"; inserted "or 1990, 1991, and 1992"; and substituted "four dollars ($4.00)" for "two dollars ($2.00)."

## § 106-568.22. Effect of two-thirds vote for assessment in referendum.

If in such referendum two-thirds or more of the eligible tobacco farmers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment to be determined by the board of directors of Tobacco Associates, Incorporated, but in an amount of not more than four dollars ($4.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, then such assessment shall be collected in the manner hereinafter provided. (1959, c. 309, s. 5; 1987, c. 294, s. 3; 1989, c. 349, s. 2.)

**Effect of Amendments.** —
The 1989 amendment, effective June 19, 1989, substituted "four dollars ($4.00)" for "two dollars ($2.00)."

## § 106-568.25. Question at referendum.

Said referendum shall be upon the question of whether or not the farmers eligible for participation therein and voting therein shall favor an assessment upon themselves for the period of the next three tobacco marketing years, in an amount in each of said years as determined by or to be determined by the board of directors of Tobacco Associates, Incorporated but not more than four dollars ($4.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, for the purpose of providing farmer participation in the fund and through the agency established for the stimulation, expansion and development of export markets for flue-cured tobacco and the encouragement of the use of flue-cured tobacco everywhere. (1959, c. 309, s. 8; 1987, c. 294, s. 6; 1989, c. 349, s. 3.)

**Effect of Amendments.** —
The 1989 amendment, effective June 19, 1989, substituted "the next three tobacco marketing years" for "three years, 1989, 1990 and 1991"; and substituted "four dollars ($4.00)" for "two dollars ($2.00)."

## § 106-568.29. Subsequent referendum after defeat of assessment.

In the event any referendum conducted as provided for in this Article shall not be supported by two-thirds or more of those voting therein, then the board of directors of Tobacco Associates, Incorporated shall have full power and authority to call another referendum for the purposes herein set forth in any succeeding year, on the question of an annual assessment for the next three tobacco marketing years or less. If the referendum is carried as provided in this Article, then the assessments may be levied and collected as provided in this Article. (1959, c. 309, s. 12; 1989, c. 349, s. 4.)

**Effect of Amendments.** — The 1989 amendment, effective June 19, 1989, inserted "tobacco marketing" near the end of the first sentence.

## § 106-568.34. Alternate method for levy of assessment.

At any time when it may be found by the Board of Directors of Tobacco Associates, that it is not reasonably feasible to base the authorization of an assessment or the making of an assessment or the collection of an assessment on a "per-acre" unit, then the Board of Directors of Tobacco Associates, by an affirmative vote of not less than two thirds of its members (which vote shall include the affirmative vote of not less than two thirds of the board members who were elected by North Carolina farm organizations), may use a "tobacco poundage" unit as the basis for the authorization or making or collecting an assessment. No alternative assessment for any year after 1988 shall exceed one-fifth cent ($^1/_5$¢) per pound of the flue-cured tobacco marketed by each farmer. The amount of any alternate assessment, based upon a "tobacco poundage" unit as permitted by the provisions of this section shall not be related to or limited by the amount of the assessment which could be authorized, made or collected if it were based upon a "per-acre" unit. (1973, c. 81; 1979, c. 474, s. 1; 1987, c. 294, s. 10; 1989, c. 349, s. 5.)

**Effect of Amendments.** — The 1989 amendment, effective June 19, 1989, in the next-to-last sentence, substituted "year after 1988" for "year after 1979", and substituted "one-fifth cent ($^1/_5$¢) per pound" for "ten cents (10¢) per 100 pounds."

## § 106-568.36. Maximum levy after 1988.

The maximum amount which may be authorized in any referendum held pursuant to the provisions of this Article during 1989 or thereafter, and the maximum amount which may be assessed, collected or levied for any year after 1988 by the Board of Directors of Tobacco Associates pursuant to the provisions of this Article, is four dollars ($4.00) per acre per year on all flue-cured tobacco acreage in the State, or, under the alternate method for levy of assessment set out in G.S. 106-568.34, one-fifth cent ($^1/_5$¢) per pound of the flue-cured tobacco marketed by each farmer. (1979, c. 474, s. 2; 1987, c. 294, s. 13; 1989, c. 349, s. 6.)

**Effect of Amendments.** — The 1989 amendment, effective June 19, 1989, substituted "1988" in the catchline and within the section for "1979"; substituted "1989" for "1979" following "Article during"; substituted "four dollars ($4.00)" for "two dollars ($2.00)"; and substituted "one-fifth cent (1/5¢) per pound" for "ten cents (10¢) per 100 pounds."

## § 106-568.37. Report on use of assessments.

The Board of Directors of the Tobacco Associates, Incorporated shall make an annual written report of the financial transactions and a financial statement concerning the receipts and disbursements of the revenue from the assessment. A copy of the report shall be provided by the Board of Directors of the Tobacco Associates, Incorporated to the Commissioner of Agriculture, the Dean of the College of Agriculture and Life Sciences at North Carolina State University, the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the Bright Belt Warehouse Association. (1989, c. 349, s. 7.)

**Editor's Note.** — Session Laws 1989, c. 349, s. 8 made this section effective upon ratification. The act was ratified June 19, 1989.

## ARTICLE 51A.

## *North Carolina Antifreeze Law of 1975.*

## § 106-579.11. (Effective October 1, 1994 — See editor's note) Submission of formula.

When application for a license or permit to sell antifreeze in this State is made to the Commissioner, he may require the applicant to furnish a statement of the formula or contents of such antifreeze, which said statement shall conform to rules and regulations established by the Commissioner; provided, however, that the statement of formula or contents may state the content of inhibitor ingredients in generic terms if such inhibitor ingredients total less than five percent (5%) by weight of the antifreeze and if in lieu thereof the manufacturer, packer, seller or distributor furnishes the Commissioner with satisfactory evidence, other than by disclosure of the actual chemical names and percentages of the inhibitor ingredients, that the said antifreeze is in conformity with this Article and any rules and regulations promulgated and adopted by the Board. All statements of content, formulas or trade secrets furnished under this section shall be privileged and confidential and shall not be made public or open to the inspection of any person, firm, association or corporation other than the Commissioner. All such statements of contents shall not be subject to subpoena nor shall the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal unless with the consent of the applicant furnishing such statements to the Commissioner; provided, however, that in emergency situations information may be revealed to physicians or to other qualified persons for use in preparation of antidotes. The disclosure of any such information, except as provided in this section, shall be a Class 2 misdemeanor. (1949, c. 1165; 1975, c. 719, s. 11; 1993, c. 539, s. 806; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentence inserted "Class 2" preceding "misdemeanor".

## § 106-579.12. Violation.

(a) **(Effective October 1, 1994 — See editor's note)** Any person who shall be adjudged to have violated any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) Nothing in this Article shall be construed as requiring the Commissioner to: (i) report for prosecution, or (ii) institute seizure proceedings, or (iii) issue a "stop sale" or "withdrawal from distribution" order, as a result of minor violations of the Article, or when he believes the public interest will best be served by suitable notice of warning in writing to the registrant or the person whose name and address appears on the labeling.

(c) It shall be the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(d) The Commissioner is hereby authorized to apply for and the court to grant a temporary restraining order and a preliminary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Article or any rules or regulations promulgated under the Article notwithstanding the existence of other remedies at law.

(e) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this Article may within 30 days thereafter bring action in the Superior Court of Wake County for judicial review of such act, order or ruling according to the provisions of Article 33 of Chapter 143 of the General Statutes. (1949, c. 1165; 1973, c. 47, s. 2; 1975, c. 719, s. 12; 1993, c. 539, s. 807; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of subsection (a) substituted "Class 2 misdemeanor" for "misdemeanor, and for each violation shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or shall be imprisoned for not more than 60 days, or both".

## ARTICLE 52.

## *Agricultural Development.*

### § 106-581.1. Agriculture defined.

For purposes of this Article, the terms "agriculture" and "agricultural" shall refer to the cultivation of soil for production of crops, including but not limited to fruits, vegetables, flowers and ornamental plants, the planting and production of trees and timber, and the raising of livestock, for individual and public use, consumption, and marketing. Further, for purposes of this Article, aquaculture is considered a form of agriculture pursuant to G.S. 106-758. (1991, c. 81, s. 1.)

**Editor's Note.** — Session Laws 1991, c. 81, s. 2 made this section effective upon ratification. The act was ratified May 9, 1991.

### § 106-583. Policy of State; cooperation of departments and agencies with Agricultural Extension Service.

**Editor's Note.** — Session Laws 1989 (Reg. Sess., 1990), c. 880, s. 2 provides: "The Secretary of the Department of Environment, Health, and Natural Resources shall review and make determinations concerning the following:

"(1) The permit process for nondischarge permits generally and nondischarge permits for the land application of food wastes. The Secretary shall determine whether such permits can be issued in a shorter period of time.

"(2) The regulatory criteria and permit conditions applicable to the nondischarge of wastes. The Secretary shall propose which criteria and permit conditions may be appropriately altered for the land application of food wastes in order to increase the availability of application sites, expedite the permit application development process, and to recognize other appropriate distinguishing characteristics of food wastes.

"(3) The impact of the nondischarge regulations and permits on the need for emergency disposal of food wastes. The Secretary shall determine what constitutes an emergency disposal need and shall recommend the appropriate methods or regulatory criteria to meet those needs on a timely basis."

Session Laws 1989 (Reg. Sess., 1990), c. 880, s. 3 provides that the Secretary of Environment, Health, and Natural Resources, in consultation with the Department of Agriculture, the North Carolina Agricultural Extension Service, a land application contractor, and the North Carolina Water Pollution Control Federation, shall report his preliminary findings and recommendations to the Legislative Research Commission no later than November 1, 1990, and a final report shall be made to the General Assembly on or before the first day of the convening of the 1991 General Assembly.

## ARTICLE 53.

## *Grain Dealers.*

### § 106-604. License fee; bond required; exemption.

All applications shall be accompanied by an initial or renewal license fee of fifty dollars ($50.00) plus thirty dollars ($30.00) per certificate or decal for each separate buying station or truck and a good and sufficient bond in the amount of ten thousand dollars ($10,000) to satisfy the initial license application. A fee of five dollars ($5.00) shall be charged for each duplicate license, certificate or decal. "Cash buyers" upon written request to the Commissioner showing proof satisfactory to the Commissioner that the person is a "cash buyer" under this Article shall be exempted from bonding requirements hereunder. The exemption shall be granted within 20 days of the receipt of the exemption request or unless the Commissioner requests the dealer to provide additional necessary information or unless the request is denied. (1973, c. 665, s. 4; 1989, c. 544, s. 1.)

**Editor's Note.** — Session Laws 1989, c. 544, which amended this section, provides in s. 23: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "fifty dollars ($50.00) plus thirty dollars ($30.00)" for "twenty-five dollars ($25.00) plus twenty dollars ($20.00)" in the first sentence; and substituted "five dollars ($5.00)" for "one dollar ($1.00)" in the second sentence.

### § 106-607. Renewal of license.

Licenses shall be renewed upon application and payment of renewal fees on or before the fifteenth day of June following the date of expiration of any license hereunder issued. Applications received after June 15 of any year shall be subject to a late filing fee of twenty dollars ($20.00) in addition to other applicable fees. (1973, c. 665, s. 7; 1989, c. 544, s. 3.)

**Editor's Note.** — Session Laws 1989, c. 544, which amended this section, provides in s. 23: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "twenty dollars ($20.00)" for "ten dollars ($10.00)."

### § 106-614. (Effective October 1, 1994 — See editor's note) Violation a misdemeanor.

Any person who violates any provision of this Article or any rule or regulation of the Board of Agriculture promulgated hereunder shall be guilty of a Class 2 misdemeanor. In case of a continuing violation or violations, each day and each violation occurring constitutes a separate and distinct offense. (1973, c. 665, s. 14; 1993, c. 539, s. 808; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence substituted "Class 2 misdemeanor" for "misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or imprisoned for not more than 60 days, or both fined and imprisoned".

## ARTICLE 54.

## *Adulteration of Grains.*

### § 106-624. Sign furnished by Commissioner.

It shall be the duty of the Commissioner to cause to be prepared and furnished for a fee of ten dollars ($10.00) each to all grain dealers, as defined in this Article, in the State a sign not less than 11 x 15 inches, which shall contain information that it is a violation of law for any person to sell, offer for sale or deliver adulterated grain. Said sign shall also set out the penalties for violation of this Article. Duplicate signs, and replacement for signs lost, stolen, worn or otherwise unusable, shall be purchased from the Department of Agriculture for a fee of five dollars ($5.00) per sign. (1975, c. 659, s. 4; 1989, c. 544, s. 2.)

**Editor's Note.** — Session Laws 1989, c. 544, which amended this section, provides in s. 23: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, substituted "ten dollars ($10.00)" for "five dollars ($5.00)" in the first sentence.

## ARTICLE 55.

## *North Carolina Bee and Honey Act of 1977.*

### § 106-639.1. Permit to sell bees.

Prior to selling bees in North Carolina, a person shall obtain a permit from the Commissioner. Application for the permit shall be made on a form provided by the Commissioner, and shall be accompanied by a nonrefundable fee of twenty-five dollars ($25.00). The Commissioner may deny, suspend, or revoke a permit for any violation of this Article or rules adopted to implement the Article. Permits shall expire annually on December 31 and may be renewed upon payment of a fee of twenty-five dollars ($25.00). All proceedings concerning the denial, suspension, or revocation of a permit shall be conducted in accordance with the Administrative Procedure Act, Chapter 150B of the General Statutes. No permit shall be required for (i) the sale of less than 10 bee hives in a calendar year, (ii) a one-time going-out-of-business sale of less than 50 bee hives, or (iii) the renting of bees for pollination purposes or the movement of bees to gather honey. (1991, c. 349, s. 1.)

**Editor's Note.** — Session Laws 1991, c. 349, s. 3 made this section effective January 1, 1992.

## § 106-644. Penalties.

(a) **(Effective October 1, 1994 — See editor's note)** If anyone shall attempt to prevent inspection as provided in this Article or shall otherwise interfere with the Commissioner of Agriculture, or any of his agents, while engaging in the performance of his duties under this Article, or shall violate any provisions of this Article or any regulation of the Board of Agriculture adopted pursuant to this Article, he shall be guilty of a Class 3 misdemeanor. Each day's violation shall constitute a separate offense.

(b) The Commissioner may assess a civil penalty of not more than ten thousand dollars ($10,000) against a person who violates this Article or a rule adopted to implement this Article. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Procedure Act, Chapter 150B of the General Statutes. If not paid within 30 days after the effective date of a final decision by the Commissioner, the penalty may be collected by any lawful means for the collection of a debt. (1977, c. 238, s. 11; 1991, c. 349, s. 2; 1993, c. 539, s. 809; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1991 amendment, effective January 1, 1992, inserted subsection designation (a) and added subsection (b).

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of subsection (a) substituted "Class 3 misdemeanor" for "misdemeanor and shall be fined not more than fifty dollars ($50.00) or imprisoned for not more than 30 days, for each offense."

## ARTICLE 56.

## *North Carolina Commercial Fertilizer Law.*

## § 106-657. Definitions.

When used in this Article:

(1) The term "brand name" means the name under which any individual mixed fertilizer or fertilizer material is offered for sale, and may include a trademark, but shall not include any numeral other than the grade of the fertilizer.

(2) The term "bulk fertilizer" means a commercial fertilizer distributed in non-package form.

(3) The term "commercial fertilizer" includes both fluid and dry mixed fertilizer and/or fertilizer materials.

(4) The term "contractor" means any person, firm, corporation, wholesaler, retailer, distributor or any other person, who for hire or reward applies commercial fertilizer to the soil or crop of a consumer; provided, that this shall not apply to any consumer applying commercial fertilizer to only the land or crop that he owns or to which he otherwise holds rights, for the production of his own crops.

(5) The term "distributor" means any person who offers for sale, sells, barters, or otherwise supplies mixed fertilizer or fertilizer materials.

(6) The term "fertilizer material" means any substance containing either nitrogen, phosphorus, potassium, or any other recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers. Not included in this definition are all types of unmanipulated animal and vegetable manures and mulches for which no plant food content is claimed.

(7) The term "fluid fertilizer" means a nonsolid commercial fertilizer.

(8) The term "fortified mulch" means substances composed primarily of plant remains or mixtures of such substances to which plant food has been added and for which plant food is claimed.

In "fortified mulches" the minimum percentages of total nitrogen, available phosphate and soluble or available potash are to be guaranteed and the guarantee stated in multiples of quarter (.25) percentages; provided, however, that such percentages shall not exceed one percent (1%), respectively, subject to the same limits and tolerances set forth in this Chapter.

(9) The term "grade" means the percentage of total nitrogen, available phosphate and soluble potash only stated in the order given in this subdivision, and, when applied to mixed fertilizers, shall be in whole numbers only for all packages larger than 16 ounces.

(10) The term "manipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have been processed in any manner, including the addition of plant foods, artificially drying, grinding and other means.

In "manipulated manures" the minimum percentages of total nitrogen, available phosphate and soluble potash are to be guaranteed, and the guarantee stated in multiples of half (.50) percentages. Additions of plant food shall be limited to one-half (.50) percent each of nitrogen, phosphorus and potash.

(11) The term "manufacturer" means a person engaged in the business of preparing, mixing, or manufacturing commercial fertilizers or the person whose name appears on the label as being responsible for the guarantee. The term "manufacture" means preparing, mixing, or combining fertilizer materials chemically or physically, including the simultaneous application of two or more fertilizer materials, by a manufacturer or contract applicator.

(12) The term "mixed fertilizers" means products resulting from the combination, mixture, or simultaneous application of two or more fertilizer materials for use in, or claimed to have value in promoting plant growth.

(13) The term "mulch" means substances composed primarily of plant remains or mixtures of such substances to which no plant food has been added and for which no plant food is claimed.

(14) The term "natural organic fertilizer" means material derived from either plant or animal products containing one or more elements (other than carbon, hydrogen and oxygen) which are essential for plant growth. These materials may be subjected to biological degradation processes under normal conditions of aging, rainfall, sun-curing, air drying, composting, rotting, enzymatic, or anaerobic/aerobic bacterial action, or any combination of these. These materials shall not be mixed with synthetic materials, or changed in any physical or chemical manner from their initial state except by physical manipulations such as drying, cooking, chopping, grinding, shredding or pelleting.

(15) The term "official sample" means any sample of commercial fertilizer taken by the Commissioner or his authorized agent according to the method prescribed in subsection (b) of G.S. 106-662.

(16) The term "organic fertilizer" means a material containing carbon and one or more elements other than hydrogen and oxygen essential for plant growth.

(17) The term "percent" or "percentage" means the percentage by weight.

(18) The term "person" includes individuals, partnerships, associations, firms, agencies, and corporations, or other legal entity.

(19) The term "retailer" means any person who sells or delivers fertilizer to a consumer.

(20) The term "sale" means any transfer of title or possession, or both, exchange or barter of tangible personal property, conditional or otherwise for a consideration paid or to be paid, and this shall include any of said transactions whereby title or ownership is to pass and shall further mean and include any bailment, loan, lease, rental or license to use or consume tangible personal property for a consideration paid in which possession of said property passes to the bailee, borrower, lessee, or licensee.

(21) The term "sell" means the alienation, exchange, transfer or contract for such transfer of property for a fixed price in money or its equivalent.

(22) The term "specialty fertilizer" means any fertilizer distributed primarily for use on noncommercial crops such as gardens, lawns, shrubs, flowers, golf courses, cemeteries and nurseries.

(23) The term "ton" means a net ton of two thousand pounds avoirdupois.

(24) The term "unmanipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have not been processed in any manner.

(25) The term "wholesaler" shall mean any person who sells to any other person for the purpose of resale, and who also may sell to a consumer.

(26) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

(27) The term "fertilizer coated seed" means seed which has been coated with commercial fertilizer. (1947, c. 1086, s. 3; 1951, c. 1026, ss. 1, 2; 1955, c. 354, s. 1; 1959, c. 706, ss. 1, 2; 1961, c. 66, ss. 1, 2; 1977, c. 303, s. 3; 1981, c. 448, ss. 1-4; 1983, c. 146, s. 1; 1993, c. 216, s. 3.)

**Effect of Amendments.** — The 1993 amendment, effective December 1, 1993, substituted "phosphate" for "phosphoric acid (as $P_2O_5$)", and deleted "(as $K_2O$)" following "soluble potash" throughout the article.

## § 106-659. Minimum plant food content.

Superphosphate containing less than eighteen percent (18%) available phosphate, or any mixed fertilizer in which the guarantees for the nitrogen, available phosphate, or soluble potash are in fractional percentages shall not be offered for sale, sold, or distributed in this State; provided, however, packages of 16 fluid ounces or less when in liquid form, or 16 ounces or less avoirdupois when in a dry form, may be sold in fractional percentages, but such packages are not exempt from any other requirements of this Article. (1947, c. 1086, s. 10; 1951, c. 1026, s. 7; 1973, c. 611, s. 6; 1975, c. 126; 1977, c. 303, s. 5; 1983, c. 146, s. 4; 1987, c. 292, s. 1; 1993, c. 216, s. 4.)

**Effect of Amendments.** — The 1993 amendment, effective December 1, 1993, substituted "phosphate" for "phosphoric acid" throughout the article and substituted "shall not" for "may not" following "fractional percentages".

## § 106-660. Registration of brands; licensing of manufacturers and distributors; fluid fertilizers.

(a) Each brand of commercial fertilizer for tobacco, specialty fertilizer, fertilizer materials, manipulated manure and fortified mulch shall be registered by the person whose name appears upon the label before being offered for sale, sold or distributed in this State, except those brands expressly produced for experimental and demonstration purposes only. Other fertilizers may be manufactured and sold without registration after obtaining a license as required in G.S. 106-661(a). The application for registration shall be submitted in duplicate to the Commissioner for his approval on forms furnished by the Commissioner, and shall include a fee of five dollars ($5.00) per brand and grade for all packages greater than five pounds. The registration fee for packages of five pounds or less shall be thirty dollars ($30.00). All approved registrations expire on June 30 of each year. The application shall include such information as deemed necessary by the Board of Agriculture.

(b) The distributor of any brand and grade of commercial fertilizer shall not be required to register the same if it has already been registered under this Article by a person entitled to do so and such registration is then outstanding.

(c) The grade of any brand of mixed fertilizer shall not be changed during the registration period, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed: Provided, prompt notification of such change is given to the Commissioner and the change is noted on the container or tag: Provided, further, that the guaranteed analysis shall not be changed if it, in any way, lowers the quality of the fertilizer: Provided, further, that if at a subsequent registration period, the registrant desires to make any change in the registration of a given brand and grade of fertilizer, said registrant shall notify the Commissioner of such change 30 days in advance of such registration. If the Commissioner, after consultation with the director of the agricultural experiment station decides that such change materially lowers the crop producing value of the fertilizer, he shall notify the registrant of his conclusions, and if the registrant registers the brand and grade with the proposed changes, then the Commissioner shall give due publicity to said changes through the Agricultural Review or by such other means as he may deem advisable.

(d) Any person desiring to manufacture or distribute fertilizers not required to be registered shall first secure a license. Application for said license shall be made on forms provided by the Commissioner and shall be accompanied by a reasonable fee to be determined by the Board of Agriculture. The Board shall charge a maximum of one hundred dollars ($100.00) for said license. Said license shall be renewable annually on the first day of July. Said license may be suspended, revoked or terminated for a violation of this Article or any rule promulgated thereunder.

(e) When fluid fertilizer is offered for sale or sold in this State, the method of transfer of custody shall be by weight expressed in pounds, and shall be invoiced in such a manner as to show the name of the seller, the name of the purchaser, the date of sale, the grade, and the net weight; provided, however, that fluid fertilizer may be measured in gallons of 231 cubic inches and its equivalent expressed in pounds, with a formula for converting from gallons to pounds shown on the invoice.

(f) Repealed by Session Laws 1983, c. 146, s. 2, effective July 1, 1983.

(g) Before any anhydrous ammonia installation shall be built in this State, a general layout of such installation shall be submitted in duplicate and approved by the Commissioner. In order that such a layout may be approved it must conform to the minimum standards and rules and regulations, relating to safe handling, storage, distribution and/or application adopted by the Board of Agriculture. All storage tanks, transfer or transport containers, applicator containers, and attached equipment shall conform to the minimum standards adopted by the Board of Agriculture. It shall be the duty of the contractors referred to in G.S. 106-657(4) to obtain, maintain and operate in accordance with the minimum standards and rules and regulations adopted by the Board of Agriculture, any and all equipment which he may use in the application of anhydrous ammonia. It shall be the duty of the Commissioner to inspect and ascertain whether or not the provisions of this section are complied with. (1947, c. 1086, s. 4; 1949, c. 637, s. 1; 1951, c. 1026, ss. 3-6; 1959, c. 706, ss. 3-5; 1961, c. 66, ss. 3, 4; 1973, c. 611, ss. 1-4; 1977, c.

303, s. 6; 1981, c. 448, ss. 5, 6; 1983, c. 146, ss. 2, 3; 1987, c. 292, s. 2; 1989, c. 544, s. 5.)

**Editor's Note.** — Session Laws 1989, c. 544, which amended this section, provides in s. 23: "This act shall become effective July 1, 1989, except that rules may be adopted and filed to implement it at any time after ratification." The act was ratified on June 30, 1989.

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, in subsection (a) substituted "five dollars ($5.00)" for "two dollars ($2.00)" in the third from the last sentence, substituted "thirty dollars ($30.00)" for "twenty-five dollars ($25.00)" in the next to the last sentence; and inserted the next to the last sentence in subsection (d).

## § 106-661. Labeling.

(a) Any commercial fertilizer offered for sale, sold, or distributed in this State in bags, barrels, or other containers shall have placed on or affixed to the container the net weight and the data in written or printed form, required by G.S. 106-660(a), either (i) on tags to be affixed to the end of the package or (ii) directly on the package. In case the brand name appears on the package, the grade shall also appear on the package, immediately preceding the guaranteed analysis or as a part of the brand name. The size of the type of numerals indicating the grade on the containers shall not be less than two inches in height for containers of 100 pounds or more; not less than one inch for containers of 50 to 99 pounds; and not less than 1/2 inch for packages of 25 to 49 pounds. On packages of less than 25 pounds, the grade must appear in numerals at least one half as large as the letters in the brand name. In case of fertilizers sold in containers on which the brand name or other designations of the distributor do not appear, the grade must appear in a manner prescribed by the Commissioner on tags attached to the container.

(b) If transported in bulk, the net weight and the data, in written or printed form, as required by G.S. 106-660(a), shall accompany delivery and be supplied to the purchaser.

(c) If mixed fertilizer is sold or intended to be sold in bags weighing more than 100 pounds, each bag must have a tag attached thereto, of a type approved by the Commissioner, showing the grade of the fertilizer contained therein. Such tag must be attached on the end of each bag, approximately at the center of the sewed end of the bag: Provided, that in lieu of such tag the grade of the fertilizer may be printed on the end of the bag in readily legible numerals.

(d) All labels and registrations shall carry identical guarantees for each fertilizer product requiring registration. (1947, c. 1086, s. 5; 1949, c. 637, s. 2; 1955, c. 354, s. 2; 1975, c. 127; 1977, c. 303, s. 7; 1981, c. 448, s. 7; 1989, c. 770, s. 28.)

**Effect of Amendments.** — The 1989 amendment, effective August 12, 1989, deleted "with the exception of subdivision (5)" following "G.S. 106-660(a)" in the first sentence of subsection (a) and in subsection (b).

## § 106-664. Determination and publication of commercial values.

For the purpose of determining the commercial values to be applied under the provisions of G.S. 106-665, the Commissioner shall determine and publish annually the values per pound of nitrogen, available phosphate, and soluble potash in commercial fertilizers in this State. The values so determined and published shall be used in determining and assessing penalties. (1947, c. 1086, s. 9; 1977, c. 303, s. 10; 1993, c. 216, s. 5.)

**Effect of Amendments.** — The 1993 amendment, effective December 1, 1993, substituted "phosphate" for "phosphoric acid" in the first sentence.

## § 106-665. Plant food deficiency.

(a) The Commissioner, in determining for administrative purposes, whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in subdivision (15) of G.S. 106-657, and as provided for in subsections (b), (c), and (d) of G.S. 106-662.

(b) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any ingredient, a penalty shall be assessed in accordance with the following provisions:

(1) For total nitrogen, available phosphate, or available potash: A penalty of three times the value of the deficiency if the deficiency is in excess of the following investigational allowances.

| *Guarantee Percentage* | *Total Nitrogen* | *Available Phosphate* | *Soluble Potash Percentage* |
|---|---|---|---|
| 4 or less | 0.49 | 0.67 | 0.41 |
| 5 | 0.51 | 0.67 | 0.43 |
| 6 | 0.52 | 0.67 | 0.47 |
| 7 | 0.54 | 0.68 | 0.53 |
| 8 | 0.55 | 0.68 | 0.60 |
| 9 | 0.57 | 0.68 | 0.65 |
| 10 | 0.58 | 0.69 | 0.70 |
| 12 | 0.61 | 0.69 | 0.79 |
| 14 | 0.63 | 0.70 | 0.87 |
| 16 | 0.67 | 0.70 | 0.94 |
| 18 | 0.70 | 0.71 | 1.01 |
| 20 | 0.73 | 0.72 | 1.08 |
| 22 | 0.75 | 0.72 | 1.15 |
| 24 | 0.78 | 0.73 | 1.21 |
| 26 | 0.81 | 0.73 | 1.27 |
| 28 | 0.83 | 0.74 | 1.33 |
| 30 | 0.86 | 0.75 | 1.39 |
| 32 or more | 0.88 | 0.76 | 1.44 |

Provided that when the found relative value of a sample is equal to or exceeds the guaranteed relative value, an overage in primary nutrients may compensate for a deficiency in another primary nutrient up to 10% of the guarantee of the deficient nutrient, not to exceed two units. No compensation shall be allowed toward a deficiency if the overage does not compensate for the entire amount of the deficiency or if the deficiency exceeds 10% of the guarantee or the deficiency exceeds two units. If more than one primary nutrient is in penalty status, no compensation shall be allowed.

(2) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five percent (5%) (or 100 pounds of calcium carbonate equivalent per ton) from the guarantee, a penalty of fifty cents (50¢) per ton for each 50 pounds calcium carbonate equivalent, or fraction thereof in excess of the 100 pounds allowed, shall be assessed and paid as is prescribed in subsection (c) of this section.

(3) Chlorine: If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than 0.5 of one percent, a penalty shall be assessed equal to ten percent (10%) of the value of the fertilizer for each additional 0.5 of one percent of excess or fraction thereof.

(4) Water insoluble nitrogen: A penalty of three times the value of the deficiency shall be assessed, if such deficiency is in excess of 0.15 of one percent on goods guaranteed up to and including five-tenths percent; 0.20 of one percent on goods guaranteed from five-tenths percent to one percent; 0.30 of one percent on goods guaranteed from one percent to two percent; 0.50 of one percent on goods guaranteed above two percent and up to and including five percent; and 1.00 percent on goods guaranteed over five percent.

(5) Nitrate nitrogen: A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed 0.20 of one percent for goods guaranteed up to and including five-tenths percent; 0.25 of one percent for goods guaranteed from five-tenths to one percent; 0.30 of one percent for goods guaranteed from one to two percent; and 0.35 of one percent for goods guaranteed above two percent up to four percent. Tolerances for goods guaranteed above four percent shall be the same as for total nitrogen.

(6) Total magnesium: If the magnesium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar ($1.00) per ton shall be assessed for each 0.15 of one percent additional deficiency or fraction thereof.

(7) Total calcium: If the calcium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar ($1.00) per ton shall be assessed for each 0.35 of one percent additional deficiency or fraction thereof.

(8) Sulfur: If the sulfur content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of one dollar ($1.00) per ton for each 0.50 of one percent additional excess or fraction thereof, shall be assessed.

(9) Deficiencies or excesses in any other constituent or constituents covered under subdivisions (6) and (7), subsection (a), G.S. 106-660 which the registrant is required to or may

guarantee shall be evaluated by the Commissioner and penalties therefor shall be prescribed by the Commissioner in fertilizer regulations.

(10) For micro-nutrients as are not specifically covered in this Article, a tolerance of twenty-five percent (25%) of the guarantee will be allowed for each element, not to exceed ½ unit (.5%) on guarantees up to 15 units or percent and not to exceed one unit (1%) on guarantees above 15 units or percent.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner; provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumer cannot be found, the amount of the penalty assessed shall be paid to the Commissioner who shall deposit the same in the Department of Agriculture fund, of which the State Treasurer is custodian. Such sums as shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall not be subject to claim by the consumer after 12 months from the date of assessment. (1947, c. 1086, s. 8; 1955, c. 354, s. 4; 1977, c. 303, s. 11; 1983, c. 146, s. 5; 1993, c. 216, s. 6.)

**Effect of Amendments.** — The 1993 amendment, effective December 1, 1993, in subdivision (b)(1), substituted "phosphate" for "phosphoric acid" in the introductory paragraph and in the table and "the deficiency" for "such deficiency" and substituted "shall" for "will" in the next to last and last sentences of the final paragraph.

## § 106-666. "Stop sale," etc., orders.

(a) When the Commissioner finds that a lot of commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this Article, the Commissioner shall issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and shall cause the fertilizer to be held at a designated place until (i) the law has been complied with and the commercial fertilizer is released in writing by the Commissioner or (ii) the violation has been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

(b) If any manufacturer, dealer, or agent fails to pay a penalty owed on commercial fertilizer within 90 days after notice of assessment by the Commissioner, the Commissioner may issue and enforce a written or printed "stop sale, use, or removal" order to that manufacturer, dealer, or agent and shall cause any commercial fertilizer distributed and offered by that manufacturer, dealer, or agent for sale in the State to be held until (i) the penalties are paid in full and the commercial fertilizer is released in writing by the Commissioner or (ii) the penalties have been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1086, s. 18; 1955, c. 354, s. 5; 1977, c. 303, s. 12; 1993, c. 216, s. 1.)

**Effect of Amendments.** — The 1993 amendment, effective December 1, 1993, rewrote present subsection (a) and added subsection (b).

## § 106-668. (Effective October 1, 1994 — See editor's note) Punishment for violations.

Each of the following offenses shall be a Class 1 misdemeanor and any person upon conviction thereof shall be punished as provided by law for the punishment of Class 1 misdemeanors:

(1) To manufacture, offer for sale, or sell in this State any mixed fertilizer or fertilizer materials containing any substance that is injurious to crop growth or deleterious to the soil, or to use in such mixed fertilizer or fertilizer materials as a filler any substance with the effect of defrauding the purchaser.

(2) To offer for sale or to sell in this State for fertilizer purposes any raw or untreated leather, hair, wool waste, hoof, horn, rubber or similar nitrogenous materials, the plant food content of which is largely unavailable, either as such or mixed with other fertilizer materials.

(3) To make any false or misleading representation in regard to any mixed fertilizer or fertilizer material shipped, sold or offered for sale by him in this State, or to use any misleading or deceptive trademark or brand in connection therewith. The sale or offer for sale of any mixture of nitrogenous fertilizer materials under a name or other designation descriptive of only one of the components of the mixture shall be considered deceptive and fraudulent.

The Commissioner is authorized to refuse registration for any commercial fertilizer with respect to which this section is violated.

(4) The filing with the Commissioner of any false statement of fact in connection with the registration under G.S. 106-660 of any commercial fertilizer.

(5) Forcibly obstructing the Commissioner or any official inspector authorized by the Commissioner in the lawful performance by him of his duties in the administration of this Article.

(6) Knowingly taking a false sample of commercial fertilizer for use under provisions of this Article; or knowingly submitting to the Commissioner for analysis a false sample thereof; or making to any person any false representation with regard to any commercial fertilizer sold or offered for sale in this State for the purpose of deceiving or defrauding such other person.

(7) The fraudulent tampering with any lot of commercial fertilizer so that as a result thereof any sample of such commercial fertilizer taken and submitted for analysis under this Article may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under

this Article, if done prior to such analysis and disposition of the sample under the direction of the Commissioner.

(8) The delivery to any person by the fertilizer chemist or his assistants or other employees of the Commissioner of a report that is willfully false and misleading on any analysis of commercial fertilizer made by the Department in connection with the administration of this Article.

(9) Selling or offering for sale in this State commercial fertilizer without marking the same as required by G.S. 106-661.

(10) Selling or offering for sale in this State commercial fertilizer containing less than the minimum content required by G.S. 106-659.

(11) Failure of any manufacturer, importer, jobber, agent, or dealer to have applied for and to have been issued a permit as required by G.S. 106-671 before selling, offering, or exposing for sale or distributing commercial fertilizers in this State.

(12) Failure of any manufacturer or contractor to procure a license under the provisions of G.S. 106-660(d) before beginning operations within the State. (1947, c. 1086, s. 20; 1959, c. 706, ss. 10, 11; 1977, c. 303, s. 14; 1993, c. 539, s. 810; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the introductory language twice inserted "Class 1" preceding "misdemeanor".

## § 106-671. Inspection fees; reporting system.

(a) For the purpose of defraying expenses on the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture a charge of twenty-five cents (25¢) per ton on all commercial fertilizers other than packages of five pounds or less. Inspection fees shall be paid on all tonnage distributed into North Carolina to any person not having a valid reporting permit. On individual packages of five pounds or less there shall be paid in lieu of the tonnage fee an annual registration fee of twenty-five dollars ($25.00) for each brand offered for sale, sold, or distributed; provided that any per annum (fiscal) tonnage of any brand sold in excess of one hundred tons may be subject to the charge of twenty-five cents (25¢) per ton on any amount in excess of one hundred tons as provided herein. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county; provided, this shall not exempt the commercial fertilizers from an ad valorem tax.

(b) Reporting System. — Each manufacturer, importer, jobber, firm, corporation or person who distributes commercial fertilizers in this State shall make application to the Commissioner for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina Department of Agriculture an inspection fee of twenty-five cents (25¢) per ton. The Commissioner is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of commercial fertilizers sold in the State, and as are satisfactory to the Commissioner. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the inspection fees paid. Each registrant shall report monthly the tonnage sold to non-registrants on forms furnished by the Commissioner. Such reports shall be made and inspection fees shall be due and payable monthly on the fifteenth of each month covering the tonnage and kind of commercial fertilizers sold during the past month. If the report is not filed and the inspection fee paid by the last day of the month it is due, the amount due shall bear a penalty of ten percent (10%), which shall be added to the inspection fee due. If the report is not filed and the inspection fee paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit. (1947, c. 1086, s. 6; 1949, c. 637, s. 3; 1959, c. 706, ss. 6, 7; 1973, c. 611, s. 5; 1977, c. 303, s. 17; 1991, c. 98, s. 2.)

**Effect of Amendments.** — The 1991 amendment, effective July 1, 1991, in subsection (b), substituted "inspection fee due" for "inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bond which may be required" at the end of the sixth sentence, and deleted the former eighth and ninth sentences, which specified a deposit to be made with the Commissioner to guarantee faithful performance.

## § 106-673. Authority of Board of Agriculture to make rules and regulations.

Because legislation with regard to commercial fertilizer sold or offered for sale in this State must be adapted to complex conditions and standards involving numerous details with which the General Assembly cannot deal directly and in order to effectuate the purposes and policies of this Article, and in order to insure the manufacturer, distributor, and consumer of the correct quality and quantity of all commercial fertilizer sold or offered for sale in this State, the Board of Agriculture shall have the authority to make rules and regulations with respect to:

(1) The maximum chlorine guarantee permitted for tobacco fertilizer;
(2) The maximum chlorine guarantee permitted in tobacco top dressers;
(3) Which grades of fertilizer may be branded top dressers;
(4) The labeling of the grade of fertilizer when such fertilizer is sold in plain or unbranded bags;
(5) The labeling requirements for all containers of liquid commercial fertilizer for direct application to the soil;
(6) The bag sizes which may be used in the sale of commercial fertilizer;
(7) The labeling requirements for packages containing a combination of any nonfertilizer material and mixed tobacco fertilizer;

(8) Registration and labeling requirements for grades and brands of fertilizer carrying any guarantee of boron; the tolerance allowances for the percentage of boron in fertilizer mixtures;

(9) The required composition for boron-landplaster mixtures before they may be registered and sold for use on peanuts in this State; the labeling requirements for each container of such mixture;

(10) The monetary penalties assessed for excesses or deficiencies of boron and all other minor elements above or below the tolerances allowed;

(11) The registration and labeling of general crop grades and tobacco grades;

(12) The method, and the time limitations for the reporting to the Commissioner of Agriculture of the tonnage of each grade of fertilizer shipped to each destination in the State by each manufacturer or firm having fertilizer registered in this State;

(13) The required composition, before such mixtures may be registered and sold in this State, of fertilizer-pesticide, landplaster-pesticide, and fertilizer-landplaster-pesticide, when to be used for peanuts alone;

(14) The labeling and bag requirements of fertilizer-landplaster-pesticide mixtures;

(15) The standards and requirements which must be met before fertilizer-pesticide mixtures may be registered in this State. These requirements may include, but are not limited to, approval in North Carolina of both the pesticide and the fertilizer grades, approval of the mixture by the Board of Agriculture, and any labeling requirements;

(16) The standards and requirements which must be complied with before fertilizers-pesticides may, without registering the mixture, be mixed for direct application at the farmer's request;

(17) Requests for mixing any pesticide with fertilizer, for products not previously approved by the Board of Agriculture;

(18) Packaging requirements for fertilizer-pesticide mixtures sold either in bulk or in bags, such that dusting, spillage, sifting, or a loss of any fertilizer-pesticide mixture will not occur;

(19) The percentages of nitrogen required to be in nitrogen solutions, before such solutions may be registered and sold in this State;

(20) The labeling of fertilizer products to ascertain their compliance to the Fertilizer or Lime and Landplaster Law;

(21) Requesting substantiating data to back up claims made about a fertilizer product; registration may be denied if such data is not furnished;

(22) The denial of approval of the registration of fertilizer products when such products will not, when used as directed, supply deficient needs of a plant;

(23) Safety requirements for the movement, handling and storage of fluid fertilizers;

(24) Standards and requirements for equipment and tanks for handling liquid fertilizer;

(25) Refusing registration as a result of information or recommendations from the director of research stations;

(26) Establishing minimum guarantees permissible for registering secondary elements and micronutrients;

(27) Establishing minimum standards for containment of fertilizer materials in storage to prevent contamination of groundwater and surface water; and

(28) Standards and labeling requirements for specialty fertilizers. (1947, c. 1086, s. 15; 1949, c. 637, s. 4; 1977, c. 303, s. 19; 1991, c. 100, s. 1; 1993, c. 216, s. 2.)

**Effect of Amendments.** — The 1991 amendment, effective May 22, 1991, substituted "micronutrients; and" for "micro-nutrients" in subdivision (26), and added subdivision (27).

The 1993 amendment, effective December 1, 1993, in the first paragraph, substituted "adapted" for "adopted", and substituted "to:" for "to" preceding subsection (1), added subsection (28) and made related changes.

## Article 57.

## *Nuisance Liability of Agricultural and Forestry Operations.*

### § 106-700. Legislative determination and declaration of policy.

It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land and forestland for the production of food, fiber, and other products. When other land uses extend into agricultural and forest areas, agricultural and forestry operations often become the subject of nuisance suits. As a result, agricultural and forestry operations are sometimes forced to cease. Many others are discouraged from making investments in farm and forest improvements. It is the purpose of this Article to reduce the loss to the State of its agricultural and forestry resources by limiting the circumstances under which an agricultural or forestry operation may be deemed to be a nuisance. (1979, c. 202, s. 1; 1991 (Reg. Sess., 1992), c. 892, s. 1.)

**Editor's Note.** — Session Laws 1991 (Reg. Sess., 1992), c. 892, s. 1, effective October 1, 1992, inserted "and Forestry" in the heading of this article.

**Effect of Amendments.** — The 1991 (Reg. Sess., 1992) amendment, effective October 1, 1992, in the first sentence inserted "and forestland", substituted "food, fiber" for "food", and deleted "agricultural" following "and other", in the second sentence substituted "other land" for "nonagricultural land", inserted "and forest", and inserted "and forestry", in the third sentence inserted "and forestry" and deleted "operations" following "to cease", inserted "and forest" in the fourth sentence, and in the last sentence inserted "and forestry", and substituted "an agricultural or forestry operation" for "agricultural operations."

## § 106-701. When agricultural and forestry operation, etc., not constituted nuisance by changed conditions in locality.

(a) No agricultural or forestry operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or its appurtenances.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(b1) For the purposes of this Article, "forestry operation" shall mean those activities involved in the growing, managing, and harvesting of trees, but not sawmill operations.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by him on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural or forestry operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or any of its appurtenances. Provided further, that the provisions shall not apply whenever a nuisance results from an agricultural or forestry operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future. (1979, c. 202, s. 1; 1991 (Reg. Sess., 1992), c. 892, s. 1.)

**Effect of Amendments.** — The 1991 (Reg. Sess., 1992) amendment, effective October 1, 1992, inserted "or forestry" in the catchline and in two places in subsection (a), added subsection (b1), substituted "by him" for "by them" in subsection (c), and inserted "or forestry" throughout subsection (d).

## ARTICLE 57A.

## *Civil Liability of Farmers.*

### § 106-706. Exemption from civil liability for farmers permitting gleaning.

Any farmer, as an owner, lessee, occupant, or otherwise in control of land, who allows without compensation another person to enter upon the land for the purpose of removing any crops remaining in the farmer's fields following the harvesting of the crops, owes that person the same duty of care the farmer owes a trespasser. (1991 (Reg. Sess., 1992), c. 868, s. 1.)

**Editor's Note.** — Session Laws 1991 (Reg. Sess., 1992), c. 868, s. 2 made this article effective October 1, 1992.

## ARTICLE 58.

## *North Carolina Biologics Law of 1981.*

### § 106-714. Penalties for violation.

(a) **(Effective October 1, 1994 — See editor's note)** Any person adjudged to have violated any provision of this Article or the rules and regulations promulgated thereunder is guilty of a Class 2 misdemeanor. The Attorney General or his representative has concurrent jurisdiction with the district attorneys of this State to prosecute violations under this section.

(b) The Commissioner may apply to the Superior Court for an injunction to restrain and prevent violations of this Article or the rules and regulations promulgated thereunder irrespective of whether there exists an adequate remedy elsewhere at law. (1981, c. 552, s. 1; 1993, c. 539, s. 811; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of subsection (a) substituted "Class 2 misdemeanor" for "misdemeanor punishable by fine of no less than one hundred dollars ($100.00) per violation and no more than one thousand dollars ($1,000), or imprisonment for no less than 60 days and no more than six months, or both".

## ARTICLE 61.

## *Preservation of Farmland.*

### § 106-744. Purchase of agricultural conservation easements.

(a) A county may, with the voluntary consent of landowners, acquire by purchase agricultural conservation easements over qualifying farmland as defined by G.S. 106-737 located within a voluntary agricultural district as defined by G.S. 106-738.

(b) For purposes of this section, "agricultural conservation easement" means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Such easement:

(1) May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations; and

(2) Shall be perpetual in duration, provided that, at least 20 years after the purchase of an easement, a county may agree to reconvey the easement to the owner of the land for consideration, if the landowner can demonstrate to the satisfaction of the county that commercial agriculture is no longer practicable on the land in question.

(c) There is established a "North Carolina Farmland Preservation Trust Fund" to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for the purchase of agricultural conservation easements, including transaction costs, and shall distribute Trust Fund monies to counties and private nonprofit conservation organizations for such purchases, including transaction costs. The Commissioner of Agriculture shall adopt rules and regulations governing the use, distribution, investment, and management of Trust Fund monies.

(d) This section shall apply to agricultural conservation easements falling within its terms. This section shall not be construed to make unenforceable any restriction, easement, covenant, or condition that does not comply with the requirements of this section.

This section shall not be construed to invalidate any farmland preservation program.

This section shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain, or otherwise and to use property of any kind for public purposes.

This section shall not be construed to authorize any public entity, agency, or instrumentality to acquire by eminent domain an agricultural conservation easement. (1991, c. 734, s. 1.)

**Editor's Note.** — Session Laws 1991, c. 734, s. 2, made this section effective August 1, 1991.

**§§ 106-745 through 106-749:** Reserved for future codification purposes.

## ARTICLE 62.

## *Grape Growers Council.*

**§§ 106-752 through 106-755:** Reserved for future codification purposes.

## ARTICLE 63.

## *Aquaculture Development Act.*

### § 106-756. Legislative findings and purpose.

The General Assembly finds and declares that it is in the best interest of the citizens of North Carolina to promote and encourage the development of the State's aquacultural resources in order to augment food supplies, expand employment, promote economic activity, increase stocks of native aquatic species, enhance commercial and recreational fishing and protect and better use the land and water resources of the State. (1989, c. 752, s. 147.)

**Editor's Note.** — Session Laws 1989, c. 752, s. 168 made this Article effective July 1, 1989.

Session Laws 1989, c. 752, s. 167 is a severability clause.

### § 106-757. Short title.

This Article shall be known as the Aquaculture Development Act. (1989, c. 752, s. 147.)

### § 106-758. Definitions.

In addition to the definitions in G.S. 113-129, the following definitions shall apply as used in this Article,

(1) "Aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching;

(2) "Aquaculture facility" means any land, structure or other appurtenance that is used for aquaculture, including, but not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture;

(3) "Aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but not limited to, "fish" and "fishes" as defined in G.S. 113-129(7);

(4) "Commissioner" means the Commissioner of Agriculture;

(5) "Department" means the North Carolina Department of Agriculture. (1989, c. 752, s. 147; 1993, c. 18, s. 1.)

**Effect of Amendments.** — The 1993 amendment, effective January 1, 1994, in the introductory language, substituted "In addition to the definitions in G.S. 113-129, the following definitions shall apply as" for "As"; and in subdivision (3) substituted "G.S. 113-129(7)" for "G.S. 113-129(f)".

## § 106-759. Lead agency; powers and duties.

(a) For the purposes of this Article, aquaculture is considered to be a form of agriculture and thus the Department of Agriculture is designated as the lead State agency in matters pertaining to aquaculture.

(b) The Department shall have the following powers and duties:

(1) To provide aquaculturalists with information and assistance in obtaining permits related to aquacultural activities;

(2) To promote investment in aquaculture facilities in order to expand production and processing capacity; and

(3) To work with appropriate State and federal agencies to review, develop and implement policies and procedures to facilitate aquacultural development. (1989, c. 752, s. 147.)

## § 106-760. Advisory Board.

(a) There is created within the Department of Agriculture the Aquaculture Advisory Board, to consist of the following persons:

(1) The Commissioner of Agriculture, or his designee;

(2) The Secretary of Commerce, or his designee;

(3) The Secretary of Environment, Health, and Natural Resources, or his designee;

(4) The President of the North Carolina Biotechnology Center, or his designee;

(5) The President of the University of North Carolina, or his designee;

(6) One Senator designated by the President Pro Tempore of the Senate; and

(7) One Representative designated by the Speaker of the House of Representatives.

(b) The Commissioner of Agriculture or his designee shall serve as Chairman of the Board. A majority of the Board shall constitute a quorum for the transaction of business. Clerical and other assistance shall be provided by the Department of Agriculture. The Commissioner may appoint advisory committees, pursuant to G.S. 143B-10(d), to assist the Board in carrying out its duties.

(c) The Board shall review State and federal policies, laws and regulations affecting aquaculture and recommend changes which may be necessary or useful to carry out the purposes of this Article. The Board shall present its recommendations to the Governor and the General Assembly. The Board shall also assist in the coordination of aquaculture-related activities of the various State agencies and institutions, and shall coordinate research and technology transfer activities to respond to the emerging requirements of aquaculture. (1989, c. 727, s. 223(c); c. 751, s. 9(c); c. 752, s. 147; 1991 (Reg. Sess., 1992), c. 959, s. 85.)

**Editor's Note.** — Pursuant to Session Laws 1991 (Reg. Sess., 1992), c. 959, s. 85, a reference to the Secretary of Commerce has been substituted for a reference to the Secretary of Economic and Community Development.

## § 106-761. Aquaculture facility registration and licensing.

(a) Authority. The North Carolina Department of Agriculture shall regulate the production and sale of commercially raised freshwater fish and freshwater crustacean species. The Board of Agriculture shall promulgate rules for the registration of facilities for the production and sale of freshwater aquaculturally raised species. The Board may prescribe standards under which commercially reared fish may be transported, possessed, bought, and sold. The Department of Agriculture and Board of Agriculture authority shall be limited to commercially reared fish and shall not include authority over the wild fishery resource which is managed under the authority of the North Carolina Wildlife Resources Commission. The authority granted herein to regulate facilities licensed pursuant to this section does not authorize the Department of Agriculture or the Board of Agriculture to promulgate rules that (i) are inconsistent with rules adopted by any other State agency; or (ii) exempt such facilities from the rules adopted by any other State agency.

(b) Species subject to this section. The following species are exempt from special restrictions on introduction of exotic species promulgated by the Wildlife Resources Commission except to prevent disease. All other species are prohibited from propagation and production unless the applicant for the permit first obtains written permission from the Wildlife Resources Commission.

| | |
|---|---|
| (1) Bluegill | Lepomis macrochirus |
| (2) Redear Sunfish | Lepomis microlophus |
| (3) Redbreast Sunfish | Lepomis auritus |
| (4) Green Sunfish | Lepomis cyanellus |
| (5) Any hybrids using above species of the genus Lepomis | |
| (6) Black Crappie | Pomoxis nigromaculatus |
| (7) White Crappie | Pomoxis annularis |
| (8) Largemouth Bass | Micropterus salmoides (northern strain) |
| (9) Smallmouth Bass | Micropterus dolomieui |
| (10) White Catfish | Ictalurus catus |
| (11) Channel Catfish | Ictalurus punctatus |
| (12) Golden Shiner | Notemigonus crysoleucas |
| (13) Fathead Minnow | Pimephales promelas |
| (14) Goldfish | Carassius auratus |
| (15) Rainbow Trout | Oncorhynchus mykiss |
| (16) Brown Trout | Salmo trutta |
| (17) Brook Trout | Salvelinus fontinalis |
| (18) Common Carp | Cyprinus carpio |
| (19) Crayfish | Procambarus species |

(c) Hybrid striped bass. The hybrid striped bass shall be subject to rules adopted by the Board of Agriculture in all river basins of the State except for the Neuse, Roanoke, and Tar/Pamlico River basins. In these basins production, propagation, and holding facilities shall comply with additional escapement prevention measures as prescribed by the Wildlife Resources Commission.

(d) Aquaculture Propagation and Production Facility License. The Board of Agriculture may, by rule, authorize and license the operation of fish hatcheries and production facilities for species of fish listed in subsection (b) of this section. The Board may prescribe standards of operation, qualifications of operators, and the conditions under which fish may be commercially reared, transported, possessed, bought, and sold. Aquaculture Propagation and Production Licenses issued by the North Carolina Department of Agriculture shall be valid for a period of five years.

(e) Commercial Catchout Facility License.

(1) Commercial catchout facilities must be stocked exclusively with hatchery reared fish obtained from hatcheries approved by the Department of Agriculture to prevent the introduction of diseases. The Board of Agriculture may, by rule, prescribe standards of operation and conditions under which fish from such ponds may be taken, transported, possessed, bought, and sold.

(2) The Commercial Catchout Facility License shall be valid for a period of five years. A pond owner or operator licensed under this subsection shall be authorized to sell fish taken by fishermen from the pond to such fishermen. Fish sold at such facilities shall be limited to those fish covered under this section.

(3) The holder of the Catchout Facility License shall provide receipts to the purchasers of fish. The receipt shall describe the species, number, total weight, and the location of the catchout facility.

(4) No fish taken from a commercial catchout facility may be resold by the purchasing angler for any purpose.

(5) No fishing, special trout, or other license shall be required of anglers fishing in licensed commercial catchout facilities.

(f) Holding Pond/Tank Permit. All facilities holding live food or bait species for sale must obtain a Holding Pond/Tank Permit. Permits shall be valid for a period of two years and shall only authorize possession of fish specified in this section. All fish held live for sale shall be kept in accordance with rules promulgated by the Board of Agriculture. Possession of an Aquaculture Propagation and Production Facility or Commercial Catchout Facility License shall serve in lieu of a Holding Pond/Tank Permit for possession both on and off their facilities premises. No permit shall be required for holding lobsters for sale.

(g) Possession of species other than those listed in subsection (b) of this section or as authorized in writing by the Wildlife Resources Commission shall be a violation which shall result in the revocation of the Aquaculture Propagation and Production Facility or Commercial Catchout Facility License until such time that proper authorization is received from the Wildlife Resources Commission or the unauthorized species is removed from the facility. In the event of possession of unauthorized fish species, the Wildlife Resources Commission may take further regulatory action. The Department of Agriculture and the Wildlife Resources Commission shall have authority to enter the premises of such facilities to inspect for the possession of a species other than those authorized in subsection (b) of this section or authorized by written permission of the Wildlife Resources Commission.

(h) Nothing in this act shall apply to the aquarium or ornamental trade in fish. The Wildlife Resources Commission may by rule identify species for which possession in the State is prohibited. (1993, c. 18, s. 2.)

**Editor's Note.** — Session Laws 1993, c. 18, s. 5 makes this section effective January 1, 1994.

## § 106-762. Fish disease management.

(a) The North Carolina Department of Agriculture shall, with the assistance of the Wildlife Resources Commission, develop and implement a fish disease management plan to prevent the introduction of fish diseases through aquaculture facilities subject to the provisions and duly adopted rules of this section into the State.

(b) Release of fish. It shall be unlawful to willfully release domestically raised fish into the waters of the State, other than in private ponds as defined by G.S. 113-129, without written permission of the Wildlife Resources Commission, or the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources. (1993, c. 18, s. 2.)

**Editor's Note.** — Session Laws 1993, c. 18, s. 5 makes this section effective January 1, 1994.

## § 106-763. Fish passage and residual stream flow.

(a) Natural watercourses as designated by law or regulation shall not be blocked with a stand, dam, weir, hedge, or other water diversion structure to supply an aquaculture facility that in any way prevents or fails to maintain the free passage of anadromous or indigenous fish.

(b) Residual flow in a natural watercourse below the point of water withdrawal supplying an aquaculture operation shall be sufficient to prevent destruction or serious diminution of downstream fishery habitat and shall be consistent with rules adopted by the Environmental Management Commission. (1993, c. 18, s. 2.)

**Editor's Note.** — Session Laws 1993, c. 18, s. 5 makes this section effective January 1, 1994.

## § 106-764. Violation.

A person who violates this act or a rule of the Board of Agriculture adopted hereunder is guilty of a Class 3 misdemeanor. (1993, c. 18, s. 2; 1994, Ex. Sess., c. 14, s. 56.)

**Editor's Note.** — Session Laws 1993, c. 18, s. 5 makes this section effective January 1, 1994.

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective

[October 1, 1994], and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00) or imprisonment for not more than 30 days, or both."

## ARTICLE 64.

## *Genetically Engineered Organisms Act.*

### § 106-765. (Article expires September 30, 1995 — See note) Declaration of findings.

The General Assembly of North Carolina finds and declares that biotechnology has enormous potential to benefit many fields of human endeavor, including agriculture, health care, and environmental protection, and that North Carolina, as a center for the agricultural, pharmaceutical, health care, fermentation, chemical, and food processing industries has much to gain from advances in biotechnology and genetic engineering.

The General Assembly further finds that as products of biotechnology move from contained laboratories into the environment for testing and commercialization, the citizens of North Carolina may have concerns about the potential effects of planned introductions of new genetically engineered organisms on agriculture, public health, and the natural environment. While the majority of these introductions will be environmentally benign and comparable to the introduction of new genetic entities derived from selective breeding, certain introductions might pose unknown risks and, as such, require appropriate oversight.

The General Assembly therefore determines that it is incumbent upon the State, working in concert with the federal regulatory authorities, to take responsible, timely and minimally burdensome measures to ensure that the public and the environment are protected and that risks from the environmental use of new genetically engineered organisms are promptly addressed, while simultaneously allowing biotechnological research and product development to advance. To do so, the State will create, in the Department of Agriculture, a Genetic Engineering Review Board responsible for reviewing and approving proposed introductions of genetically engineered organisms into the environment. This Board will enable the State, in cooperation with the federal authorities, to assess the potential risks and effects of releases of genetically engineered organisms without undue governmental interference with the progress and commercial development of biotechnology. (1989, c. 752, s. 148(a).)

**Cross References.** — For section providing for expiration of this Article on September 30, 1995, see § 106-777.

**Editor's Note.** — Session Laws 1989, c. 752, s. 168 made this Article effective July 1, 1989.

Session Laws 1989, c. 752, s. 167 is a severability clause.

## § 106-766. Title.

This Article shall be known as the "Genetically Engineered Organisms Act." (1989, c. 752, s. 148(a).)

## § 106-767. Purpose.

The purpose of this Article is to regulate the release and commercial use of genetically engineered organisms in order to protect agriculture, public health, and the environment. This Article does not apply to the breeding of plants, animals, and other organisms by traditional methods, such as artificial insemination or hand pollination. (1989, c. 752, s. 148(a).)

## § 106-768. Definitions.

As used in this Article:

(1) "Adverse effect" means physical injury to agriculture, public health, or the environment.
(2) "Board" means the Genetic Engineering Review Board.
(3) "Commercial use" means the sale, offering for sale, or distribution of a genetically engineered organism.
(4) "Commissioner" means the Commissioner of Agriculture.
(5) "Department" means the Department of Agriculture.
(6) "Genetic engineering" means the introduction of new genetic material to an organism or the regrouping of an organism's genes, except for the breeding of plants, animals, and other organisms by traditional methods, such as artificial insemination or hand pollination, and such other methods as may be designated by the Board under G.S. 106-770.
(7) "Genetically engineered organism" means a living organism derived from genetic engineering.
(8) "Organism" means any animal, plant, bacterium, cyanobacterium, fungus, protist, or virus.
(9) "Release" means the placement or use of a genetically engineered organism outside a contained laboratory, fermentation facility, greenhouse, building, structure, or other similar facility or under any other conditions not specifically determined by the Board to be adequately contained. (1989, c. 752, s. 148(a).)

## § 106-769. Genetic Engineering Review Board.

(a) There is created the Genetic Engineering Review Board in the Department of Agriculture. The Board shall consist of 10 members as follows:

(1) The Secretary of Environment, Health, and Natural Resources or his designee;
(2) The State Health Director or his designee;
(3) The Commissioner of Agriculture or his designee;
(4) The President of the North Carolina Biotechnology Center or his designee;
(5) The Dean of the College of Agriculture and Life Sciences at North Carolina State University, or his designee, and the

Dean of the School of Agriculture at North Carolina Agricultural and Technical State University, or his designee;

(6) The Dean of the School of Public Health of the University of North Carolina at Chapel Hill or his designee;

(7) A practicing farmer who is an active member of a farm organization, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives;

(8) A representative of a nonprofit public interest organization appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate; and

(9) A representative of the biotechnology industry appointed by the Governor.

(b) The appointed members of the Board shall serve for three-year terms. Members designated by an ex officio member shall serve at the pleasure of the ex officio member. Appointments and designations shall be made within 60 days after July 1, 1989.

(c) A chairman shall be elected by the Board from among its members for a one-year term, and shall serve no more than two consecutive terms. The Commissioner of Agriculture may appoint a member of the Board to serve as interim chairman for one year or until the Board elects a chairman, whichever is sooner.

(d) Any vacancies shall be filled by the appropriate appointing authority. Any appointment to fill a vacancy on the Board created by resignation, dismissal, death, disability or any cause shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Any appointed member of the Board may be removed by the appointing authority for misfeasance, malfeasance or nonfeasance.

(e) The members of the Board who are not State employees shall receive per diem and travel and subsistence allowances as provided by law. All clerical and other services required by the Board shall be supplied by the Department of Agriculture. A majority of the Board shall constitute a quorum for the transaction of business. Rule making and administrative proceedings shall be governed by the North Carolina Administrative Procedure Act. (1989, c. 727, s. 223(c); c. 752, s. 148(a); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1993, c. 513, s. 5.)

**Editor's Note.** — Pursuant to Session Laws 1989, c. 727, s. 223(c), reference to the Secretary of the Department of Environment, Health, and Natural Resources was substituted for reference to the Secretary of the Department of Natural Resources and Community Development.

Pursuant to Session Laws 1989 (Reg. Sess., 1990), c. 1004, s. 19(b), reference to the Secretary of Environment, Health, and Natural Resources has been substituted for reference to the Secretary of the Department of Environment, Health, and Natural Resources.

**Effect of Amendments.** — The 1993 amendment, effective July 24, 1993, in subdivision (a)(2), substituted "State Health Director" for "Secretary of Human Resources".

## § 106-770. Board's powers and duties.

(a) The Board shall:

(1) Delegate to the Commissioner any of its duties, other than rule making, but including issuance of permits, as the Board deems necessary or convenient for the administration and enforcement of this Article; and

(2) Adopt regulations designating those activities that will not be treated as genetic engineering for the purposes of this Article.

(b) The Board may:

(1) Grant, deny, suspend, modify or revoke permits as provided by this Article;

(2) Adopt, amend, or revoke regulations to implement and carry out the purposes of this Article; and

(3) Establish advisory committees to assist the Board in carrying out its duties. (1989, c. 752, s. 148(a).)

## § 106-771. Commissioner's powers and duties.

The Commissioner may:

(1) Enforce this Article, administer the permit process, and exercise the powers and duties imposed upon him by this Article or by rules adopted in accordance with this Article; and

(2) Designate such employees of the North Carolina Department of Agriculture, and enter into cooperative agreements with federal and State agencies, as may be necessary to carry out the duties and exercise the powers provided by this Article. (1989, c. 752, s. 148(a).)

## § 106-772. Permits required; applications; federal review; permit revocation.

(a) A genetically engineered organism may not be released into the environment, or sold, offered for sale, or distributed for release into the environment unless a permit for its release has been issued pursuant to this Article. The Board may, by regulation, provide for general permits for classes of activities for which individual permits will not be required.

(b) Permit applications shall be on forms or in the format prescribed by the Board, and shall include such information as the Board deems necessary in order to determine compliance with this Article. To the extent feasible, the Board shall authorize the use of forms or formats required by the federal government for actions similar to those regulated under this Article. Applicants shall, upon request by the Board, submit copies of data submitted with corresponding federal permit applications.

(c) The Board may require such additional data as it deems necessary to determine potential adverse effects of the release of the organism on agriculture, public health, and the environment. To the extent possible, the Board shall accept for review and base its decision on the data submitted with the federal application.

(d) The Board may, if it deems it necessary to protect agriculture, public health, or the environment from potential adverse effects of the release of a genetically engineered organism:

(1) Place restrictions on the number and location of organisms released, method of release, training of persons involved with the release of organisms, disposal of organisms, and other conditions of use;
(2) Require measures to limit dispersal of released organisms or spread of inserted genes or gene products;
(3) Require monitoring of the abundance and dispersal of the released organism or inserted genes or gene products; and
(4) Deny, suspend, modify, or revoke the permit.

(e) The Board may submit written comments to any federal agency reviewing a proposed or completed release, and otherwise participate in any such reviews. The Board may issue a permit under this Article based on the federal review and approval of the proposed release if the Board determines that federal regulation of the release sufficiently protects agriculture, public health, and the environment in North Carolina. The Board shall minimize duplication of federal regulatory requirements to the extent possible.

(f) The Board may deny, suspend, modify, or revoke a permit for failure to comply with this Article or with any rule adopted in accordance with this Article. Such proceedings shall be in accordance with the Administrative Procedure Act. The Board may summarily suspend a permit in accordance with G.S. 150B-3, pending further proceedings, if the Board determines that an adverse effect is occurring or is likely to occur because of a release authorized by such permit.

(g) A decision shall be made on a permit application within 90 days from the date the completed application is received by the Board, unless a public hearing is held pursuant to G.S. 106-773. The Board may, for good cause, extend the time for making a decision by no more than 30 days.

(h) Issuance of permits under this Article is not subject to the provisions of Article 1 of Chapter 113A of the General Statutes.

(i) An application may be withdrawn at any time by written notice to the Board. (1989, c. 752, s. 148(a).)

**Editor's Note.** — Session Laws 1989, c. 752, s. 148(b) provided: "No permits are required under G.S. 106-772, as enacted in subsection (a) of this section, until July 1, 1990."

## § 106-773. Public notice of releases; public hearing.

(a) Within 15 days after receiving a completed application for a proposed release, the Board shall publish notice and a brief description of the proposed release, unless the Board intends to deny the application. Notice shall also be provided to any person who has filed a written request to be notified of such releases. The Board shall prescribe the form, content and extent of the notice. However, at a minimum, notice shall be given by publication one time in a newspaper having general circulation in each county where the release is proposed to be made. In addition, subject to the provisions of this Article regarding confidential business information, any documents submitted as part of the application shall be available for public inspection or copying at or near the site of the proposed release and at the offices of the Board. Any person may submit written comments to the Board regarding the proposed release.

(b) Any person may request a public hearing on a permit application by filing a written request with the Board within 30 days after the date of the notice of the application. The Board shall consider all such requests for hearing and, if it determines that there is significant public interest and justification for holding such a hearing, a hearing shall be held in the county where the release is proposed to be made. If the Board determines that a public hearing should be held, it may do so even though no hearing has been requested. Notice of the hearing shall be published at least 30 days before the hearing date. The Board shall prescribe the form, content, and extent of the notice. However, at a minimum, notice shall be given by publication one time in a newspaper having general circulation in each county where the release is proposed to be made.

(c) If a public hearing is held, a decision shall be made on the permit application within 120 days after the date the completed application is received by the Board. The Board may, for good cause, extend the time for making a decision by no more than 30 additional days.

(d) The Board may, with the written consent of the applicant, extend the period to review the application. (1989, c. 752, s. 148(a).)

## § 106-774. Confidential business information.

(a) In submitting information pursuant to this Article, an applicant for a permit may designate as "confidential" any portions of which the applicant believes are entitled to treatment as confidential business information. A designation of confidentiality shall be made in writing and in such manner as the Board may prescribe. Information designated as "confidential" may be submitted separately from other material submitted.

(b) Any person engaged in the review of the effects of a proposed release of a genetically engineered organism who believes that access to undisclosed confidential business information is necessary in order to perform such review effectively may request the disclosure of material designated as confidential business information by submitting a written petition to the Board. Such a petition shall state the reason(s) that such confidential business information is necessary to the performance of the petitioner's review. In addition, the petitioner shall sign an affidavit affirming that the petitioner is not nor does petitioner represent in any capacity a person engaged in any business or enterprise in competition with the applicant or in which the confidential business information could be utilized for commercial or product development purposes. The applicant shall be notified of the petition and shall have an opportunity to respond to the petition. Such response may include an offer by the applicant to produce the confidential business information to the petitioner pursuant to terms to be expressed in a written agreement between the applicant and the petitioner, an explanation by the applicant as to why the petitioner does not need the confidential business information in order to perform such review or an offer by the applicant to provide the petitioner with other information which is not confidential and responds to the petitioner's reasons for requesting the confidential business information. By mutual written agreement of the petitioner and the applicant, the Board may delay a decision on the petition until further written notice by the petitioner. The Board shall then make a determination as to whether the petitioner does require access to any or all of the confidential business information requested by the petitioner in order to make an effective, independent review of the proposed release. Where the Board determines that the petitioner does require access to some or all of the confidential business information requested by the petitioner, the Board shall notify the applicant and the petitioner of its decision, and the applicant shall provide that confidential business information which is required by the petitioner as determined by the Board to the petitioner or withdraw its application. If the Board's decision is appealed, the applicant shall not be required to disclose the confidential business information pending appeal. If the application is withdrawn, all confidential business information shall be returned to the applicant and shall not be disclosed.

(c) Except as provided in this Article, no person may reveal or use for his own benefit any confidential business information received pursuant to this Article.

(d) Nothing in this section, or in rules adopted under this section, authorizes the Board or any person to withhold from the public information regarding the adverse effects of a proposed release of any organism. (1989, c. 752, s. 148(a).)

## § 106-775. Local regulation.

No county or municipality shall enact any regulation or ordinance regulating the release of genetically engineered organisms. (1989, c. 752, s. 148(a).)

## § 106-776. Unlawful acts; penalties; injunctions.

(a) No genetically engineered organism may be released, sold, offered for sale, or distributed in violation of this Article or rules adopted in accordance with this Article.

(b) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Board against any person who violates any provision of this Article or any rule of the Board. In determining the amount of the penalty, the Board may consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Procedure Act. Each day's violation shall constitute a separate offense.

(c) **(Effective October 1, 1994 — See editor's note)** A person who interferes with or attempts to interfere with the Commissioner or any of his agents while engaged in the performance of their duties under this Article, or violates any provision of this Article or any rule of the Board, is guilty of a Class 3 misdemeanor and is punishable only by a fine of not less than two hundred fifty dollars ($250.00) nor more than one thousand dollars ($1,000) for each offense. Each day's violation shall constitute a separate offense.

(d) Notwithstanding any remedy at law, the Commissioner is authorized to apply to the superior court, and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction to prevent or stop a violation of this Article.

(e) Any public employee who willfully releases a genetically engineered organism in violation of this Article shall be subject to dismissal. (1989, c. 752, s. 148(a); 1993, c. 539, s. 812; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (c) inserted "Class 3" preceding "misdemeanor" and inserted "only".

## § 106-777. Expiration.

This Article shall expire September 30, 1995. (1989, c. 752, s. 148(a).)

## §§ 106-778 through 106-780: Reserved for future codification purposes.

## ARTICLE 65.

## *Strawberry Assessment Act.*

## § 106-781. Title.

This Article shall be known as the "Strawberry Assessment Act." (1989 (Reg. Sess., 1990), c. 1027, s. 1.)

**Editor's Note.** — Session Laws 1989 (Reg. Sess., 1990), c. 1027, s. 2, made this Article effective upon ratification. The Act was ratified July 27, 1990.

## § 106-782. Findings and purpose.

The General Assembly hereby finds that strawberry production makes an important contribution to the State's economy; and that it is appropriate for the State to provide a means whereby strawberry producers may voluntarily assess themselves in order to provide funds for strawberry research and marketing. (1989 (Reg. Sess., 1990), c. 1027, s. 1.)

## § 106-783. Definitions.

As used in this Article:

(1) "Association" means the North Carolina Strawberry Association, Inc.

(2) "Commercial production" means the production of strawberries for sale.

(3) "Department" means the North Carolina Department of Agriculture. (1989 (Reg. Sess., 1990), c. 1027, s. 1.)

## § 106-784. Referendum.

(a) At any time after the effective date of this Article, the Association may conduct a referendum among strawberry producers upon the question of whether an assessment shall be levied as provided for herein.

(b) The Association shall determine:

(1) The amount of the proposed assessment;
(2) The period for which the assessment shall be levied, not to exceed three years;
(3) The time and place of the referendum;
(4) Procedures for conducting the referendum and counting of votes; and
(5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot; provided that no annual assessment shall exceed five percent (5%) of the value of the previous year's strawberry plant sales.

(d) All persons engaged in the commercial production of strawberries, including owners of farms, tenants and sharecroppers shall be eligible to vote in the referendum. Any questions concerning eligibility to vote shall be resolved by the Board of Directors of the Association. (1989 (Reg. Sess., 1990), c. 1027, s. 1.)

## § 106-785. Two-thirds vote required; collection of assessment.

(a) The assessment shall not be collected unless at least two-thirds of the votes cast in the referendum are in favor of the assessment. If at least two-thirds of the votes cast in the referendum are in favor of the assessment, then the Department shall notify all strawberry plant growers of the assessment. The assessment shall be added by plant growers to the price of all strawberry plants sold for planting in North Carolina and shall be remitted to the Department no later than the 10th day following the end of each calendar quarter. The Department shall provide forms to plant growers for reporting the assessment. Persons who purchase strawberry plants for commercial production on which the assessment has not been collected by the seller shall report such purchases and pay the assessment to the Department.

(b) The Association may bring an action against any plant grower who fails to pay the assessment to collect unpaid assessments, and if successful shall also recover the cost of such action, including attorney's fees. (1989 (Reg. Sess., 1990), c. 1027, s. 1.)

## § 106-786. Use of funds; refunds.

The Department shall remit all funds collected under this Article to the Association at least monthly.

The Association shall use such funds for research and marketing related to strawberries including such administrative expenses as may be reasonably necessary to carry out this function. A funding committee composed of seven members of the Association appointed by the Commissioner of Agriculture, shall approve all expenditures of such funds. Funding committee members may be reimbursed for necessary expenses as determined by the Association's Board of Directors.

Any person who has purchased strawberry plants upon which the assessment has been paid shall have the right to receive a refund of the assessment by making demand in writing to the Association within 30 days of purchase of the plants. Such demand must be accompanied by proof of purchase satisfactory to the funding committee. (1989 (Reg. Sess., 1990), c. 1027, s. 1.)

### §§ 106-787 through 106-789: Reserved for future codification purposes.

## ARTICLE 66.

## *Pork Promotion Assessment Act.*

### § 106-790. Title.

This Article shall be known as the "Pork Promotion Assessment Act." (1991, c. 605, s. 1.)

**Editor's Note.** — Session Laws 1991, c. 605, s. 3 made this Article effective upon ratification. The act was ratified July 9, 1991.

### § 106-791. Purpose.

It is in the public interest for the State to enable producers of porcine animals to assess themselves in order to raise funds to promote the interests of the pork industry. (1991, c. 605, s. 1.)

### § 106-792. Definitions.

The following definitions apply in this Article:

(1) Association. — The North Carolina Pork Producers Association, Inc., a North Carolina nonprofit corporation.

(2) Buyer. — Any person engaged as (i) a commission merchant, (ii) an auction market, or (iii) a livestock market in the business of receiving porcine animals for sale on commission for or on behalf of a pork producer.

(3) Department. — The North Carolina Department of Agriculture.

(4) Market. — To sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.

(5) Person. — An individual, a partnership, a firm, or a corporation.

(6) Porcine animal. — Swine raised for seed stock, market hogs, or slaughter.

(7) Pork producer. — A person who (i) is a North Carolina resident, (ii) owns, manages, or has a financial interest in pork production, and (iii) is actively involved in the production of porcine animals. (1991, c. 605, s. 1.)

## § 106-793. Referendum.

(a) The Association may conduct among pork producers a referendum upon the question of whether an assessment shall be levied on porcine animals sold in this State.

(b) The Association shall determine:

(1) The amount of the proposed assessment.
(2) The time and place of the referendum.
(3) Procedures for conducting the referendum and counting of votes.
(4) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment shall be stated on the referendum ballot. The amount may not exceed five cents (5¢) for each porcine animal sold in this State. If the assessment is approved in the referendum, the Association may set the assessment at an amount equal to or less than the amount stated on the ballot. If the Association sets a lower amount than the amount approved by referendum, it may increase the amount annually without a referendum by no more than one cent (1¢) for each porcine animal. The increased rate may not exceed the amount approved by referendum and may not exceed the maximum allowable rate of five cents (5¢) for each porcine animal.

(d) All pork producers may vote in the referendum. Any dispute over eligibility to vote or any other matter relating to the referendum shall be determined by the Association. The Association shall make reasonable efforts to provide pork producers with notice of the referendum and an opportunity to vote. (1991, c. 605, s. 1.)

## § 106-794. Payment and collection of assessment.

(a) The assessment shall not be collected unless more than half of the votes cast in the referendum are in favor of the assessment. If more than half of the votes cast in the referendum are in favor of the assessment, then the Association shall notify the Department of the amount of the assessment and the effective date of the assessment. The Department shall notify all buyers and pork producers of the assessment.

(b) Each pork producer must pay an assessment on each porcine animal sold to a buyer.

(c) A buyer of a porcine animal shall collect the assessment when buying a porcine animal by deducting the assessment from the price paid for the animal. The buyer shall remit collected assessments to the Department no later than the 10th day of the following month. The Department shall provide forms to buyers for reporting the assessment. If the total assessments collected by a buyer in a month are less than twenty-five dollars ($25.00), the buyer may keep the assessments until the total amount due is at least twenty-five dollars ($25.00) or the end of the quarter, whichever comes first. All buyers shall file at least one report in each calendar quarter, regardless of the amount due.

(d) A buyer of porcine animals shall keep records of the number of porcine animals purchased and the date purchased. All information or records regarding purchases of porcine animals by individual buyers shall be kept confidential by employees or agents of the Department and the Association, and shall not be disclosed except by court order.

(e) The Association may bring an action to recover any unpaid assessments, plus the reasonable costs, including attorney fees, incurred in the action. (1991, c. 605, s. 1.)

## § 106-795. Use of assessments; refunds.

(a) The Department shall remit all funds collected under this Article to the Association at least monthly. The Association shall use the funds to promote the interests of the pork industry. In order to prevent duplication of effort, these funds shall not be used for activities funded under 7 U.S.C. Chapter 79, Pork Promotion, Research, and Consumer Information.

(b) A pork producer may request a refund of an assessment deducted from the sales price of a porcine animal sold by the producer by submitting a written request for a refund to the Association within 30 days after the buyer of the animal collected the assessment. A refund request must be accompanied by proof of payment of the assessment satisfactory to the Association. The Association shall mail a refund to the producer within 30 days of receipt of a properly documented refund request. (1991, c. 605, s. 1.)

## § 106-796. Termination of assessment.

Upon receipt of a petition signed by at least ten percent (10%) of the pork producers in North Carolina known to the Association, the Department shall notify the Association, and the Association shall, within six months, conduct a referendum upon the question of continuing the assessment. If a majority of the votes cast in the referendum are against continuing the assessment, or if the Association fails to conduct a referendum within the six-month period, the assessment expires at the end of the six-month period. If a majority of the votes cast in the referendum are in favor of continuing the assessment, then no subsequent referendum shall be held for at least three years. (1991, c. 605, s. 1.)

# Chapter 108A.

**Editor's Note.** — The legislation and annotations affecting Chapter 108A have been included in a recently published replacement chapter.

# Chapter 110.

# Child Welfare.

**Article 1A.**

**Exhibition of Children.**

Sec.
110-20.1. Exhibition of certain children prohibited.

**Article 2A.**

**Parental Control of Children.**

110-44.4. Enforcement.

**Article 3.**

**Control over Child-Caring Facilities.**

110-48. (Effective October 1, 1994 — See editor's note) Violation a misdemeanor.

**Article 4.**

**Placing or Adoption of Juvenile Delinquents or Dependents.**

110-55. (Effective October 1, 1994 — See editor's note) Violation of Article a misdemeanor.

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110-136.3. Income withholding procedures; applicability.
110-136.5. Implementation of withholding in non-IV-D cases.

**Article 10.**

**Prevention of Child Abuse and Neglect.**

110-148. Council on Prevention of Child Abuse and Neglect.

## ARTICLE 1A.

## *Exhibition of Children.*

### § 110-20.1. Exhibition of certain children prohibited.

(a) Except to the extent otherwise provided in subsection (d) of this section, it is unlawful to exhibit publicly for any purpose, or to exhibit privately for the purpose of entertainment, or solely or primarily for the satisfaction of the curiosity of any observer, any child under the age of 18 years who is mentally ill or mentally retarded or who presents the appearance of having any deformity or unnatural physical formation or development, whether or not the exhibiting of the child is in return for a monetary or other consideration.

(b) It is unlawful to employ, use, have custody of, or in any way be associated with any child described in subsection (a) for the purpose of an exhibition forbidden therein, or for one who has the care, custody or control of the child as a parent, relative, guardian, employer or otherwise, to neglect or refuse to restrain the child from participating in the exhibition.

(c) It is unlawful to procure or arrange for, or participate in procuring or arranging for, anything made unlawful by subsections (a) and (b).

(d) This section does not apply to the transmission of an image by television by a duly licensed television station, or to any exhibition by a federal, State, county or municipal government, or political subdivision or agency thereof, or to any exhibition by any corporation, unincorporated association, or other organization organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) **(Effective October 1, 1994 — See editor's note)** Any violation of this Article shall be a Class 3 misdemeanor. Each day during which any violation of this Article continues after notice to the violator, from any county social services director, to cease and desist from any violation of this section shall constitute a separate and distinct offense. Any act or omission forbidden by this Article shall, with respect to each child described therein constitute a separate and distinct offense. (1969, c. 457, s. 1; c. 982; 1993, c. 539, s. 821; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of subsection (e) substituted "Class 3 misdemeanor" for "misdemeanor which, upon conviction, shall be punished by a fine of not less than five dollars ($5.00) nor moe than fifty dollars ($50.00) or imprisonment for not more than 30 days, or both such fine and imprisonment".

## ARTICLE 2A.

## *Parental Control of Children.*

### § 110-44.4. Enforcement.

The provisions of this Article may be enforced by the parent, guardian, or person standing in loco parentis to the child by filing a civil action in the district court of the county where the child can be found or the county of the plaintiff's residence. Upon the institution of such action by a verified complaint, alleging that the defendant child has left home or has left the place where he has been residing and refuses to return and comply with the direction and control of the plaintiff, the court may issue an order directing the child personally to appear before the court at a specified time to be heard in answer to the allegations of the plaintiff and to comply with further orders of the court. Such orders shall be served by the sheriff upon the child and upon any other person named as a party defendant in such action. At the time of the issuance of the order directing the child to appear the court may in the same order, or by separate order, order the sheriff to enter any house, building, structure or conveyance for the purpose of searching for said child and serving said order and for the purpose of taking custody of the person of said child in order to bring said child before the court. Any order issued at said hearing shall be treated as a mandatory injunction and shall remain in full force and effect until the child reaches the age of 18, or until further orders of the court. Within 30 days after the hearing on the original order, the child, or anyone acting in his behalf, may file a verified answer to the complaint. Upon the filing of an answer by or on behalf of said child, any district court judge holding court in the county or district court district as defined in G.S. 7A-133 where said action was instituted shall have jurisdiction to hear the matter, without a jury, and to make findings of fact, conclusions of law, and render judgment thereon. Appeals from the district court to the Court of Appeals shall be allowed as in civil actions generally. The district judge issuing the original order or the district judge hearing the matter after answer has been filed shall also have authority to order that any person named defendant in the order or judgment shall not harbor, keep, or allow the defendant child to remain on said person's premises or in said person's home. Failure of any defendant to comply with the terms of said order or judgment shall be punishable as for contempt. (1969, c. 1080, s. 4; 1987 (Reg. Sess., 1988), c. 1037, s. 108; 1991 (Reg. Sess., 1992), c. 1031, s. 1.)

**Effect of Amendments.** — The 1991 (Reg. Sess., 1992) amendment, effective October 1, 1992, and applicable to actions initiated on and after that date, added "or the county of the plaintiff's residence" in the first sentence, deleted the former eighth sentence which read: "Any aggrieved party may within the time allowed for appeal of civil actions generally appeal to the superior court where trial shall be had without a jury", and substituted "district court" for "superior court" in the present eighth sentence.

## ARTICLE 3.

## *Control over Child-Caring Facilities.*

### § 110-48. (Effective October 1, 1994 — See editor's note) Violation a misdemeanor.

Any person violating any of the provisions of G.S. 110-45, 110-46 and 110-47 shall be guilty of a Class 1 misdemeanor. (1917, c. 133, s. 4; C.S., s. 5066; 1993, c. 539, s. 822; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court".

## ARTICLE 4.

## *Placing or Adoption of Juvenile Delinquents or Dependents.*

### § 110-55. (Effective October 1, 1994 — See editor's note) Violation of Article a misdemeanor.

Every person acting for himself or for an agency who violates any of the provisions of this Article or who shall intentionally make any false statements to the Social Services Commission or the Secretary of Human Resources or an employee thereof acting for the Department in an official capacity in the placing or adoption of juvenile delinquents or dependents shall, upon conviction thereof, be guilty of a Class 2 misdemeanor. (1931, c. 226, s. 7; 1957, c. 100, s. 1; 1973, c. 476, s. 138; 1993, c. 539, s. 823; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and punished by a fine of not more than two hundred dollars ($200.00) or imprisoned for not more than six months, or by both such fine and imprisonment".

## ARTICLE 4A.

## *Interstate Compact on the Placement of Children.*

### § 110-57.1. Adoption of Compact.

#### CASE NOTES

**"Sending Agency" — Natural Parents.** — Because defendants, a child's natural parents, were persons who sent the child to North Carolina for possible adoption by plaintiffs, they were the "sending agency" as that term is used in Article II(b) of the Compact, and as such, pursuant to Article V, they retained jurisdiction, that is, authority or control over the child until his adoption, including the power to effect or cause the return of the child to their home state and "to determine all matters in relation to the custody" of the child; therefore, the trial court properly determined that it had no jurisdiction over a custody proceeding brought by potential adoptive parents. Stancil v. Brock, 108 N.C. App. 745, 425 S.E.2d 446 (1993).

## ARTICLE 7.

## *Day-Care Facilities.*

### § 110-85. Legislative intent and purpose.

**Editor's Note. —**
Session Laws 1993, c. 561, s. 104.1 (c) to (c7) and (d) establish the Child Day Care Loan Guarantee Act of 1993, the purpose of which is to encourage lenders to make loans available to child day care providers to finance the development and expansion of child day care centers and homes in low-income, distressed counties of the State (as designated by the Secretary of Commerce under G.S. 105-130.40(c) or 105-151.17(c) or both) and to increase the availability of child day care and employment opportunities in these areas.

### § 110-86. Definitions.

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

(1) Commission. The Child Day-Care Commission created under this Article.

(2) Child day care. Any child care arrangement wherein three or more children less than 13 years old receive care away from their own home by persons other than their parents, grandparents, aunts, uncles, brothers, sisters, first cousins, guardians or full-time custodians, or in the child's own home where other unrelated children are in care. Child day care does not include seasonal recreational programs operated for less than four consecutive months in a year. Child day care also does not include arrangements that provide only drop-in or short-term child care for parents participating in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term child care offered in health spas, bowling alleys, shopping malls, resort hotels, and churches.

(3) Child day care facility. Includes any child day care center or child care arrangement not excluded by G.S. 110-86(2), which provides day care for more than five children, not including the operator's own school-aged children, under the age of 13 years, on a regular basis of at least once per week for more than four hours but less than 24 hours per day, regardless of the time of day and regardless of whether the same or different children attend. The following are not included: public schools; nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes and accredited by the Southern Association of Colleges and Schools, which regularly provide a course of grade school instruction and which do not provide child day care as defined in subdivision (2) of this section or operate a child day care facility as defined herein for children under five years of age for more than six and one-half hours per day either on or off the school site; summer camps having children in full-time residence; Bible schools conducted during vacation periods; facilities licensed under Article 2 of Chapter 122C of the General Statutes; and

cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment.

Child day care facilities are separated by capacity into the following categories which determine applicable requirements and standards as established by the Commission pursuant to G.S. 110-88:

*Facility Type*
Large Home
Small Center
Medium Center
Large Center

The Commission shall establish the maximum capacity for each of the four categories of facilities.

(4) Child day care home. Any day care program or child care arrangement wherein any person not excluded in G.S. 110-86(2) provides day care on a regular basis of at least once per week for more than four hours per day for more than two children under 13 years of age, but not to exceed a maximum of eight children at any one time, wherever operated, and whether or not operated for profit. Of the children present at any one time, no more than five children shall be preschool-aged, as defined in rules adopted by the Commission. The four hour limit applies regardless of the time of day and regardless of whether the same or different children attend. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment are not included.

To determine whether a child care arrangement is a child day care home, all children shall be counted except the operator's own school-aged children and school-aged children who reside at the location of the day care home.

(4.1) Department. Department of Human Resources.

(5) Repealed by Session Laws 1975, c. 879, s. 15.

(6) License. A license issued by the Secretary to any day-care facility which meets the statutory standards established under this Article.

(7) Operator. Includes the owner, director or other person having primary responsibility for operation of a child day care facility subject to licensing.

(8) Secretary. The Secretary of the Department of Human Resources. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 4, ss. 1-3; 1983, c. 46, s. 1; c. 297, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 78; 1985, c. 589, s. 36; c. 757, s. 155(c); 1987, c. 788, s. 2; 1989, c. 234; 1991, c. 273, s. 1; 1991 (Reg. Sess., 1992), c. 904, ss. 1, 2; c. 1024, s. 1; c. 1030, s. 51.12.)

**Editor's Note.** — Session Laws 1991 (Reg. Sess., 1992), c. 904, which amended this section, in s. 3 provides: "The Department of Human Resources shall conduct a study of how the State may assure the health and safety of those children provided care in the drop-in and short-term care excluded from day care regulation pursuant to Section 1 of this act [which amended subdivision (2) of this section]. The Department shall report its findings, together with any legislative recommendations, to the Legislative Research Commission Study Committee on Child Care Issues by November 1, 1992."

Section 4 of Session Laws 1991 (Reg. Sess., 1992), c. 904 provides: "The Department of Human Resources shall adopt rules to define 'easily accessible' and any other rules necessary to implement this act."

**Effect of Amendments.** —

Session Laws 1991 (Reg. Sess., 1992), c. 904, ss. 1 and 2, effective July 9, 1992, as amended by Session Laws 1991 (Reg. Sess., 1992), c. 51.12, effective July 24, 1992, in subdivision (2) deleted "except seasonal recreational programs operated for less than four consecutive months in a year" following "child care arrangement" in the first sentence, and added the second and third sentences, and inserted "not excluded by G.S. 110-86(2)" in the first sentence of subdivision (3).

Session Laws 1991 (Reg. Sess., 1992), c. 1024, s. 1, effective July 24, 1992, substituted the language beginning "described in Part 2" and ending "either on or off the school site" for "whether or not accredited by the State Department of Public Instruction, which regularly and exclusively provide a course of grade school instruction to children who are of public school age" in the second sentence of subdivision (3).

## § 110-88. Powers and duties of the Commission.

The Commission shall have the following powers and duties:

(1) To develop policies and procedures for the issuance of a license to any child day care facility which meets all applicable standards established under this Article.

(2) To require inspections by and satisfactory written reports from representatives of local or State health agencies and fire and building inspection agencies and from representatives of the Department prior to the issuance of a license to any child day care facility.

(3) To make rules establishing minimum and reasonable standards for the operation of child day care homes and the issuance of registration certificates. These rules shall establish minimum standards of health and safety that will be required in child day care homes and will recognize the vital role that parents and guardians play in the monitoring of the care provided in child day care homes.

(4) Repealed by Session Laws 1975, c. 879, s. 15.

(5) To make rules and develop policies for implementation of this Article, including procedures for application, approval, renewal and revocation of licenses.

(6) To make rules for the issuance of a provisional license to a child day care facility and a provisional registration certificate to a child day care home that does not conform in every respect with the standards established in this Article and rules adopted by the Commission pursuant to this Article, provided that the Secretary finds that the operator is making a reasonable effort to conform to the standards, except that a provisional license or provisional registration certificate shall not be issued for more than 12 consecutive months and shall not be renewed.

(6a) To make rules for administrative action against a child day care facility or child day care home when the Secretary's investigations pursuant to G.S. 110-105(a)(3) or G.S. 110-105.1(a)(4) substantiate that child abuse or neglect did occur in the facility or home. The type of sanction shall be determined by the severity of the incident and the probability of reoccurrence. The administrative actions shall include written warnings and special provisional licenses or registration certificates.

A written warning may be issued which shall specify any corrective action to be taken by the operator. The Department shall make an unannounced visit within one month after issuance of the written warning to determine whether the corrective action has occurred. If the corrective action has not occurred, a special provisional license or registration certificate may be issued.

When a special provisional license or registration certificate is issued, it shall require specific corrective action. It shall be in effect for no more than six months from imposition and shall not be renewed. The special provisional license or registration certificate and the letter which clearly states the reasons for the special provisional status shall be posted where parents can see them. Under the terms of the special provisional license or registration, the facility or home shall not enroll any new children until notified by the Department that it is satisfied the abusive or neglectful situation no longer exists. The Department shall make an unannounced visit at least every eight weeks during the period the special provisional license or registration certificate is in effect. Specific corrective action required by a written warning, special provisional license or special provisional registration certificate, or any other administrative penalty authorized by this Article may include the permanent removal from day care of the substantiated abuser or neglecter.

Nothing in this subdivision shall restrict the Secretary from using any other statutory or administrative remedies available.

(7) To develop and promulgate standards which reflect higher levels of day care than required by the standards established by this Article, which will recognize better physical facilities, more qualified personnel, and higher quality programs. The Commission may adopt rules for the issuance of two grades of licenses: an "A" license for compliance with the provisions of the Article, and an "AA" license for those licensees meeting the voluntary higher standards promulgated by the Commission.

(8) To develop a procedure by which the Department shall furnish those forms as may be required for implementation of this Article.

(9) Repealed by Session Laws 1985, c. 757, s. 156(66).

(10) To develop rules for the issuance of a temporary license which shall expire in 90 days and which may be issued to the operator of a new facility or to the operator of a previously licensed facility when a change in ownership or location occurs.

(11) To develop rules for the care of sick children in facilities and homes. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, s. 155(d), (e), 156(a), (z), (aa), (bb); 1987, c. 543, s. 2; c. 788, s. 3; c. 827, s. 232; 1991, c. 273, s. 2; 1993, c. 185, s. 1.)

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1993, and applicable to requirements imposed on or after that date, rewrote this section.

## § 110-90. Powers and duties of Secretary of Human Resources.

The Secretary of Human Resources shall have the following powers and duties under the policies and rules of the Commission:

(1) To administer the licensing program for child day care facilities and the registration system for child day care homes.

(2) To obtain and coordinate the necessary services from other State departments and units of local government which are necessary to implement the provisions of this Article.

(3) To employ the administrative personnel and staff as may be necessary to implement this Article where required services, inspections or reports are not available from existing State agencies and units of local government.

(4) To issue a license effective for one year to any child day care facility which meets the standards established by this Article.

(5) To revoke the license of any child day care facility or the registration certificate of any child day care home which ceases to meet the standards established by this Article and rules on these standards adopted by the Commission, or which demonstrates a pattern of noncompliance with this Article or the rules, or to deny a license or registration certificate to any applicant that fails to meet the standards or the rules. These revocations and denials shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.

(6) To prosecute or defend on behalf of the State, through the office of the Attorney General, any legal actions arising out of the administration or enforcement of this Article.

(7) To promote and coordinate educational programs and materials for operators of child day care facilities and child day care homes which are designed to improve the quality of day care available in the State, using the resources of other State and local agencies and educational institutions where appropriate.

(8) To issue a rated license when any operator of a child day care facility required to be licensed hereunder or requiring licensure pursuant to subdivision (11) of this section has satisfied the Secretary that it has met the voluntary standards developed and adopted by the Commission.

(9) To levy a civil penalty pursuant to G.S. 110-103.1, or an administrative penalty pursuant to G.S. 110-102.2, or to order summary suspension of a license or registration. These actions shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.

(10) To issue final agency decisions in all G.S. 150B contested cases proceedings filed as a result of actions taken under this Article including, but not limited to the denial, revocation or suspension of a license or the levying of a civil or administrative penalty.

(11) To issue a license or registration certificate to any child care arrangement that does not meet the definition of child day care facility or child day care home in G.S. 110-86

whenever the operator of the arrangement chooses to comply with the requirements of this Article and the rules adopted by the Commission, and voluntarily applies for a child day care facility license or child day care home registration certificate. The Commission shall adopt rules for the issuance or removal of the licenses or registration certificates. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, ss. 155(g), 156(cc), (dd); 1987, c. 788, s. 4; c. 827, s. 233; 1991, c. 273, s. 3; 1993, c. 185, s. 2.)

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1993, and applicable to requirements imposed or after that date, substituted "child day care" for "day-care" throughout the section; in subdivision (3), substituted "the administrative" for "such administrative"; in subdivision (5) inserted "or the registration certificate of any child day care home", inserted "or which demonstrates a pattern of noncompliance with this Article or the rules", and inserted "or registration certificate"; in subdivision (8), inserted "or requiring licensure pursuant to subdivision (11)" and substituted "Secretary" for "Commission"; in subdivision (9), substituted "These actions" for "Such actions"; and added subdivision (11).

## § 110-91. Mandatory standards for a license.

The following standards shall be complied with by all child day care facilities, except as otherwise provided in this Article. These shall be the only required standards for the issuance of a license by the Secretary under the policies and procedures of the Commission except that the Commission may, in its discretion, adopt less stringent standards for facilities subject to licensing but which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

(1) Medical Care and Sanitation. — The Commission for Health Services shall adopt rules which establish minimum sanitation standards for child day care facilities and their personnel. The sanitation rules adopted by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; infectious disease control; sleeping facilities; and other items and facilities as are necessary in the interest of the public health. These rules shall be developed in consultation with the Department.

The Commission shall adopt rules to establish minimum requirements for child and staff health assessments and medical care procedures. These rules shall be developed in consultation with the Department of Environment, Health, and Natural Resources. Each child shall have a health assessment before being admitted or within 30 days following admission to a child day care facility. The assessment shall be done by: (i) a licensed physician, (ii) the physician's authorized agent who is currently approved by the North Carolina Board of Medical Examiners, or comparable certifying board in any state contiguous to North

Carolina, (iii) a certified nurse practitioner, or (iv) a public health nurse meeting the Department of Environment, Health, and Natural Resources' Standards for Early Periodic Screening, Diagnosis, and Treatment Program. A record of each child's assessment shall be on file in the records of the facility. However, no health assessment shall be required of any child who is and has been in normal health and whose parent, guardian, or full-time custodian objects in writing to a health assessment on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Each child shall be immunized in a manner that meets the requirements of Article 6 of Chapter 130A of the General Statutes and the pertinent rules adopted by the Commission for Health Services.

Each child day care facility shall have a plan of emergency medical care which shall include provisions for communication with and transportation to a specified medical resource, unless otherwise previously instructed. No child receiving day care shall be administered any drug or other medication without specific written instructions from a physician or the child's parent, guardian or full-time custodian. Emergency information on each child in care, including the names, addresses, and telephone numbers of the child's physician and parents, legal guardian or full-time custodian shall be readily available to the staff of the child day care facility while children are in care.

Nonprofit, tax-exempt organizations that provide prepared meals to day care centers only are considered day care centers for purposes of compliance with appropriate sanitation standards.

(2) Health-Related Activities. — Each child in a child day care facility shall receive nutritious food and refreshments under rules to be adopted by the Commission. After consultation with the State Health Director, nutrition standards shall provide for specific requirements for infants. Nutrition standards shall provide for specific requirements for children older than infants, including a daily food plan for meals and snacks served that shall be adequate for good nutrition. The number and size of servings and snacks shall be appropriate for the ages of the children and shall be planned according to the number of hours the child is in care. Menus for meals and snacks shall be planned at least one week in advance, dated, and posted where they can be seen by parents.

Each child day care facility shall arrange for each child in care to be out-of-doors each day if weather conditions permit.

Each child day care facility shall have a rest period for each child in care after lunch or at some other appropriate time.

No child day care facility shall care for more than 25 children in one group. Facilities providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel for each group.

(3) Location. — Each child day care facility shall be located in an area which is free from conditions which are deemed hazardous to the physical and moral welfare of the children in care in the opinion of the Commission.

(4) Building. — Each child day care facility shall be located in a building which meets the requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Commission specifically for child day care facilities, including facilities operated in a private residence. These standards shall be consistent with the provisions of this Article.

(5) Fire Prevention. — Each child day care facility shall be located in a building that meets the requirements for fire prevention and safe evacuation that apply to child day care facilities as established by the Department of Insurance, subject to adoption by the Commission. Each child day care facility shall be inspected at least annually by a local fire department or volunteer fire department for compliance with these requirements, except that child day care facilities located on State property shall be inspected by an official designated by the Department of Insurance.

(6) Space and Equipment Requirements. — There shall be no less than 25 square feet of indoor space for each child for which a child day care facility is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and this floor space shall provide during rest periods 200 cubic feet of airspace per child for which the facility is licensed. There shall be adequate outdoor play area for each child under rules adopted by the Commission which shall be related to the size and type of facility, availability and location of outside land area, except in no event shall the minimum required exceed 75 square feet per child, which area shall be protected to assure the safety of the children receiving day care by an adequate fence or other protection; provided, however, that a facility operated in a public school shall be deemed to have adequate fencing protection; provided, also, that a facility operating exclusively during the evening and early morning hours, between 6:00 P.M. and 6:00 A.M., need not meet the outdoor play area requirements mandated by this subdivision.

Each child day care facility shall provide equipment and furnishings that are child size, sturdy, safe, and in good repair. The Commission shall adopt standards to establish minimum requirements for equipment appropriate for the size facility being operated pursuant to G.S. 110-86(3). Space shall be available for proper storage of beds, cribs, mats, cots, sleeping garments, and linens as well as designated space for each child's personal belongings.

(7) **(See note)** Staff-Child Ratio. — In determining the staff-child ratio, all children younger than 13 years shall be counted. The Commission shall adopt rules regarding staff-child ratios, group sizes and multi-age groupings for each category of facility other than for infants and toddlers, provided that these rules shall be no less stringent than those currently required for staff-child ratios as enacted in Sec-

tion 156(e) of Chapter 757 of the 1985 Session Laws. The staff-child ratios and group sizes for infants and toddlers shall be no less stringent than as follows:

| Age | Ratio | Group Size |
|---|---|---|
| 0 to 12 months | 5 | 10 |
| 12 to 24 months | 6 | 12 |
| 2 to 3 years | 10 | 20. |

(8) Qualifications for Staff. — Each child day care facility shall be under the direction or supervision of a literate person at least 21 years of age. All staff counted in determining the required staff-child ratio shall be at least 16 years of age, provided that persons younger than 18 years of age work under the direct supervision of a literate staff person who is at least 21 years of age. No person shall be an operator of nor be employed in a child day care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children.

The Commission shall adopt standards to establish minimum qualifications for operators, supervisors, caregivers and other staff who have direct contact with the children. These standards shall reflect training, experience, education or credentialing and shall be appropriate for the size facility being operated according to the categories defined in G.S. 110-86(3). It is the intent of this provision to guarantee that all children in day care are cared for by qualified people but also to recognize that qualifications for good child care may not be limited to formal education or training standards. To this end, the standards adopted by the Commission pertaining to training and educational requirements shall include provision that these requirements may be met by informal as well as formal training and educational experience. No requirements may interfere with the teachings or doctrine of any established religious organization.

(9) Records. — Each child day care facility shall keep accurate records on each child receiving care in the child day care facility in accordance with a form furnished or approved by the Commission, and shall submit attendance reports as required by the Department.

Each child day care facility shall keep accurate records on each staff member or other person delegated responsibility for the care of children in accordance with a form approved by the Commission.

All records of any child day care facility, except financial records, shall be subject to review by the Secretary or by duly authorized representatives of the Department or a cooperating agency who shall be designated by the Secretary.

Any effort to falsify information provided to the Department shall be deemed by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the child day care facility and shall constitute a cause for revoking or denying a license to this child day care facility.

(10) Each operator or staff member shall truly and honestly show each child in that person's care true love, devotion and tender care.

Each child day care facility shall have a written policy on discipline, describing the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

The use of corporal punishment as a form of discipline is prohibited in child day care facilities and may not be used by any operator or staff member of any child day care facility, except that corporal punishment may be used in religious sponsored child day care facilities as defined in G.S. 110-106, only if (i) the religious sponsored child day care facility files with the Department a notice stating that corporal punishment is part of the religious training of its program, and (ii) the religious sponsored child day care facility clearly states in its written policy of discipline that corporal punishment is part of the religious training of its program. The written policy on discipline of nonreligious sponsored child day care facilities shall clearly state the prohibition on corporal punishment.

(11) Staff Development. — The Commission shall adopt minimum standards for ongoing staff development for facilities. These standards shall include requirements for ongoing in-service training for all staff.

(12) Planned Age Appropriate Activities. — Each child day care facility shall have a planned schedule of activities posted in a prominent place to enable parents to review it, and a written plan of age appropriate activities available to parents. Each facility shall have age appropriate activities and play materials to implement the written plan. The Commission shall establish minimum standards for age-appropriate activities appropriate for each category of facility as defined in G.S. 110-86(3).

(13) Transportation. — All child day care facilities shall abide by North Carolina law regulating the use of seat belts and child passenger restraint devices. All vehicles operated by any facility staff person or volunteer to transport children shall be properly equipped with appropriate seat belts or child restraint devices as approved by the Commissioner of Motor Vehicles. Each adult and child shall be restrained by an appropriate seat safety belt or restraint device when the vehicle is in motion. These restraint regulations do not apply to vehicles not required by federal law to be equipped with seat restraints. All vehicles used to transport children shall meet and maintain the safety inspection standards of the Division of Motor Vehicles of the Department of Transportation and the facility shall comply with all other applicable State and federal laws and

regulations concerning the operation of a motor vehicle. Children may never be left unattended in a vehicle.

The ratio of adults to children in child day care vehicles may not be less than the staff/child ratios prescribed by G.S. 110-91(7). The Commission shall adopt standards for transporting children under the age of two, including standards addressing this particular age's staff/child ratio during transportation. (1971, c. 803, s. 1; 1973, c. 476, s. 128; 1975, c. 879, s. 15; 1977, c. 1011, s. 4; c. 1104; 1979, c. 9, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1382, ss. 1, 2; 1983, c. 46, s. 2; cc. 62, 277, 612; 1985, c. 757, ss. 155(h), (i), 156(c)-(h); 1987, c. 543, s. 3; c. 788, s. 6; c. 827, s. 234; 1989 (Reg. Sess., 1990), c. 1004, s. 56; 1991, c. 273, s. 5; c. 640, s. 1; 1993, c. 185, s. 3; c. 321, s. 254(c); c. 513, s. 9; c. 553, s. 32.)

**Editor's Note.** —

Session Laws 1993, c. 321, s. 254, which amended subdivision (7) of this section, in subsection (c1) provides: "Notwithstanding any other provision of law to the contrary, religious sponsored facilities operating under G.S. 110-106, and not receiving any State or federal child care subsidies, including subsidies paid by the State or local service agency directly to the facility or to the parent of a child enrolled in the facility, shall have until June 30, 1994, to comply with the lower staff-child ratio for children under age 3 if the religious sponsored facility files with the Department of Human Resources a notice of intent to delay compliance with the ratios and a statement of assurance that the facility will not accept any public child-care subsidy funds until compliance with ratios is achieved. All religious sponsored facilities shall comply fully with the provisions of G.S. 110-91(7) by July 1, 1994."

Session Laws 1993, c. 321, s. 254, which amended this section, in subsection (d) provides: "Of the funds appropriated to the Department of Human Resources the sum of one million four hundred thousand dollars ($1,400,000) for the 1993-94 fiscal year and the sum of two million two hundred sixteen thousand two hundred ninety-three dollars ($2,216,293) for the 1994-95 fiscal year, shall be used to increase the reimbursement rate for day care providers to implement subsection (c) of this section."

Session Laws 1993, c. 321, s. 321, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993, c. 321, s. 322 is a severability clause.

**Effect of Amendments.** —

Session Laws 1993, c. 185, s. 3, effective October 1, 1993, and applicable to requirements imposed on or after that date, substituted "child day care" for "day-care" throughout the section; rewrote subdivision (5); substituted "religious sponsored" for "church" and "nonreligious sponsored" for "nonchurch" throughout subdivision (10); and made other changes in style.

Session Laws 1993, c. 321, s. 254(c), effective July 1, 1993, in the second sentence of subdivision (7) inserted "other than for infants and toddlers" following "each category of facility", substituted "these rules" for "such rules and regulations", and added the third sentence, which includes the table.

Session Laws 1993, c. 513, s. 9, effective July 24, 1993, in the first sentence of subdivision (2), substituted "State Health Director" for "Division of Health Services of the Department of Environment, Health, and Natural Resources."

Session Laws 1993, c. 553, s. 32, effective July 24, 1993, in subdivision (11) substituted "in-service" for "inservice."

## § 110-101.1. Corporal punishment banned in certain "nonregistered" homes.

The use of corporal punishment as a form of discipline is prohibited in those day care homes that are not required to be registered under this Article but that receive State subsidies for child day care unless this care is provided to children by their parents, stepparents, grandparents, aunts, uncles, step-grandparents, or great-grandparents. Care provided children by their parents, stepparents, grandparents, aunts, uncles, step-grandparents, or great-grandparents is not subject to this section. Religious sponsored nonregistered homes are also exempt from this section. (1993, c. 268, s. 1.)

**Editor's Note.** — Session Laws 1993, c. 268, s. 2 makes this section effective upon ratification and applicable to acts of discipline imposed on or after that date. The act was ratified on July 5, 1993.

## § 110-103. (Effective October 1, 1994 — See editor's note) Criminal penalty.

Any person who violates the provisions of G.S. 110-98 through G.S. 110-100 or G.S. 110-102 shall be guilty of a Class 1 misdemeanor. Any person who violates G.S. 110-101 shall be guilty of a Class 3 misdemeanor. (1971, c. 803, s. 1; 1983, c. 297, s. 3; 1985, c. 757, s. 156(gg); 1987, c. 788, s. 14; 1993, c. 539, s. 824; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence substituted "Class 1" for "general" and in the second sentence substituted "Class 3 misdemeanor" for "misdemeanor punishable by a fine not to exceed three hundred dollars ($300.00), imprisonment for not more than 30 days, or both."

## § 110-106. Religious sponsored day-care facilities.

**Editor's Note.** — Session Laws 1993, c. 321, s. 254, which amended G.S. 110-91(7), in subsection (c1) provides: "Notwithstanding any other provision of law to the contrary, religious sponsored facilities operating under G.S. 110-106, and not receiving any State or federal child care subsidies, including subsidies paid by the State or local service agency directly to the facility or to the parent of a child enrolled in the facility, shall have until June 30, 1994, to comply with the lower staff-child ratio for children under age 3 if the religious sponsored facility files with the Department of Human Resources a notice of intent to delay compliance with the ratios and a statement of assurance that the facility will not accept any public child-care subsidy funds until compliance with ratios is achieved. All religious sponsored facilities shall comply fully with the provisions of G.S. 110-91(7) by July 1, 1994."

Session Laws 1993, c. 321, s. 321 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

## ARTICLE 9.

## *Child Support.*

### § 110-132. Acknowledgment of paternity and agreement to support.

CASE NOTES

**Legislative Intent.** —

The legislature did not intend for Chapter 50 to control all actions for child support. Reading Chapter 50 together with this chapter, the more specific provisions of this chapter dealing with the procedure for determining and enforcing support obligations of a father who voluntarily acknowledges paternity prevails over any conflicting procedure in Chapter 50 for determining and enforcing custody and support of minor children. Wake County ex rel. Horton v. Ryles, 112 N.C. App. 754, 437 S.E.2d 404 (1993).

**Notice to Putative Father.** — Three requirements must be met to enter an order for child support "on the acknowledgment of paternity": (1) the putative father's acknowledgment of paternity must be filed, (2) an interested party must make an application for an order to show cause, and (3) the court or any judge thereof must cause a summons to be issued requiring the putative father to appear in court to show cause why the court should not enter an order for support of the child. These requirements provide sufficient notice to a putative father who has had a judgment of paternity entered against him pursuant to subsection (a) of this section for the court to enter an order for child support on this judgment. Wake County ex rel. Horton v. Ryles, 112 N.C. App. 754, 437 S.E.2d 404 (1993).

**Cited** in Surles v. Surles, 113 N.C. App. 32, 437 S.E.2d 661 (1993).

### § 110-132.1. Paternity determination by another state entitled to full faith and credit.

A paternity determination made by another state:

(1) In accordance with the laws of that state, and

(2) By any means that is recognized in that state as establishing paternity

shall be entitled to full faith and credit in this State. (1993 (Reg. Sess., 1994), c. 733, s. 2.)

**Editor's Note.** — Session Laws 1993 (Reg. Sess., 1994), c. 733, s. 4, made this section effective August 1, 1994, and applicable to civil actions commenced on or after that date.

### § 110-136.3. Income withholding procedures; applicability.

(a) Required Contents of Support Orders. All child support orders, civil or criminal, entered or modified in the State in IV-D cases shall include a provision ordering income withholding to take effect immediately. All child support orders, civil or criminal, initially entered in the State in non-IV-D cases on or after January 1, 1994, shall include a provision ordering income withholding to take effect immediately as provided in G.S. 110-136.5(c1), unless one of the exceptions specified in G.S. 110-136.5(c1) applies. A non-IV-D child support order that contains an income withholding requirement and a IV-D child support order shall:

(1) Require the obligor to keep the clerk of court or IV-D agency informed of the obligor's current residence and mailing address;

(2) Repealed by Session Laws 1993, c. 517, s. 1, effective January 1, 1994.

(2a) Repealed by Session Laws 1993, c. 517, s. 1, effective January 1, 1994.

(3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income;

(4) Require the custodial party to keep the obligor informed of (i) the custodial party's disposable income and the amount and effective date of any substantial change in this disposable income and (ii) the current residence and mailing address of the child, unless the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats that constitute domestic violence under Chapter 50B of the General Statutes; and

(5) Require the obligor to keep the initiating party informed of the name and address of any payor of the obligor's disposable income and of the amount and effective date of any substantial change in this disposable income.

(b) When obligor subject to withholding.

(1) In IV-D cases in which a new or modified child support order is entered on or after October 1, 1989, an obligor is subject to income withholding immediately upon entry of the order. In IV-D cases in which the child support order was entered prior to October 1, 1989, an obligor shall become subject to income withholding on the earliest of:

a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or

b. The date on which the obligor or obligee requests withholding.

(2) In non-IV-D cases in which the child support order was entered prior to January 1, 1994, an obligor shall be subject to income withholding on the earliest of:

a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or

b. The date on which the obligor requests withholding; or

c. The date on which the court determines, pursuant to a motion or independent action filed by the obligee under G.S. 110-136.5(a), that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.

(c) Repealed by Session Laws 1993, c. 517, s. 1, effective January 1, 1994.

(d) Interstate cases. An interstate case is one in which a child support order of one state is to be enforced in another state.

(1) In interstate cases withholding provisions shall apply to a child support order of this or any other state. A petition addressed to this State to enforce a child support order of

another state or a petition from an initiating party in this State addressed to another state to enforce a child support order entered in this State shall include:

a. A certified copy of the support order with all modifications, including any income withholding notice or order still in effect;

b. A copy of the income withholding law of the jurisdiction which issued the support order, provided that this jurisdiction has a withholding law;

c. A sworn statement of arrearages;

d. The name, address, and social security number of the obligor, if known;

e. The name and address of the obligor's employer or of any other source of income of the obligor derived in the state in which withholding is sought; and

f. The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(2) The law of the state in which the support order was entered shall apply in determining when withholding shall be implemented and interpreting the child support order. The law and procedures of the state where the obligor is employed shall apply in all other respects.

(3) Except as otherwise provided by subdivision (2), income withholding initiated under this subsection is subject to all of the notice, hearing and other provisions of Chapter 110.

(4) In all interstate cases notices and orders to withhold shall be served upon the payor by a North Carolina agency or judicial officer. In all interstate non-IV-D cases, the advance notice to the obligor shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(5) For purposes of enforcing a petition under this subsection, jurisdiction is limited to the purposes of income withholding and Chapter 52A of the General Statutes shall not apply. Nothing in this subsection precludes any remedy otherwise available in a proceeding under Chapter 52A of the General Statutes.

(e) Procedures and regulations. Procedures, rules, regulations, forms, and instructions necessary to effect the income withholding provisions of this Article shall be established by the Secretary of the Department of Human Resources or the Secretary's designee and the Administrative Office of the Courts. Forms and instructions shall be sent with each order or notice of withholding. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 589, s. 1; 1989, c. 601, s. 2; 1993, c. 517, s. 1.)

**Effect of Amendments.** — The 1993 amendment, effective January 1, 1994, and applicable to all orders entered on or after that date, in subsection (a), in the first sentence, substituted "in IV-D cases" for "beginning October 1, 1989," and added the language beginning "shall include a provision" and ending "shall:"; in subdivisions (a)(1) and (a)(3), substituted "the obligor's" for "his"; repealed subdivisions (a)(2) and (a)(2a); added clause (i) in subdivision (a)(4); rewrote subdivision (a)(5); in the introductory language of subdivision (b)(2) inserted "in which the child support order was entered prior to January 1, 1994"; repealed subsection (c); in subdivision (d)(1)b. substituted "this jurisdiction" for "such jurisdiction"; deleted the last paragraph of subdivision (d)(1), limiting jurisdiction to purposes of income withholding; added subdivision (d)(5); and in subsection (e) substituted "the Secretary's" for "his".

## CASE NOTES

**In view of the purposes of this section,** there is no distinction between a parent who owes both arrearages and current support payments and one whose total support obligation consists of arrearages. Griffin v. Griffin, 103 N.C. App. 65, 404 S.E.2d 478 (1991).

**Subdivision (b)(2)c specifically provides that the withholding provisions apply** when the court determines that the obligor is or has been delinquent. This language reveals that the legislature intended income withholding to apply in any case where the obligor has ever fallen behind a month or more in payments. Griffin v. Griffin, 103 N.C. App. 65, 404 S.E.2d 478 (1991).

**The General Assembly amended the income withholding statute** in response to the requirements of the 1984 Amendments to the Social Security Act. The legislative history of the Child Support Enforcement Amendments of 1984 suggests that the purpose of the amendments was to assure that all children in the United States who are in need of assistance in securing financial support from their parents will receive assistance regardless of their circumstances. Griffin v. Griffin, 103 N.C. App. 65, 404 S.E.2d 478 (1991).

## § 110-136.5. Implementation of withholding in non-IV-D cases.

(a) Withholding based on delinquent or erratic payments. Notwithstanding any other provision of law, when an obligor is delinquent in making child support payments or has been erratic in making child support payments, the obligee may apply to the court, by motion or in an independent action, for an order for income withholding.

(1) The motion or complaint shall be verified and state, to the extent known:
  a. Whether the obligor is under a court order to provide child support and, if so, information sufficient to identify the order;
  b. Either:
    1. That the obligor is currently delinquent in making child support payments; or
    2. That the obligor has been erratic in making child support payments;
  c. The amount of overdue support and the total amount sought to be withheld;
  d. The name of each child for whose benefit support is payable; and
  e. The name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable income from each payor.

(2) The motion or complaint shall include or be accompanied by a notice to the obligor, stating:
  a. That withholding, if implemented, will apply to the obligor's current payors and all subsequent payors; and
  b. That withholding, if implemented, will be continued until terminated pursuant to G.S. 110-136.10.

At any time the parties may agree to income withholding by consent order.

(b) Withholding Based on Obligor's Request. The obligor may request at any time that income withholding be implemented. The request may be made either verbally in open court or by written request.

(1) A written request for withholding shall state:

a. That the obligor is under a court order to provide child support, and information sufficient to identify the order;

b. Whether the obligor is delinquent and the amount of any overdue support;

c. The name of each child for whose benefit support is payable;

d. The name, location, and mailing address of the payor or payors from whom the obligor receives disposable income and the amount of the obligor's monthly disposable income from each payor;

e. That the obligor understands that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10; and

f. That the obligor understands that the amount withheld will include an amount sufficient to pay current child support, an additional amount toward liquidation of any arrearages, and a two dollar ($2.00) processing fee to be retained by the employer for each withholding, but that the total amount withheld may not exceed the following percent of disposable income:

forty percent (40%) if there is only one order for withholding;

forty-five percent (45%) if there is more than one order for withholding and the obligor is supporting other dependent children or his or her spouse; or

fifty percent (50%) if there is more than one order for withholding and the obligor is not supporting other dependent children or a spouse.

(2) A written request for withholding shall be filed in the office of the clerk of superior court to which the obligor is directed to make child support payments. If the request states and the clerk verifies that the obligor is not delinquent, the court may enter an order for withholding without further notice or hearing. If the request states or the clerk finds that the obligor is delinquent, the matter shall be scheduled for hearing unless the obligor in writing waives his right to a hearing and consents to the entry of an order for withholding of an amount the court determines to be appropriate. The court may require a hearing in any case. Notice of any hearing under this subdivision shall be sent to the obligee.

(c) Order for withholding. If the district court judge finds after hearing evidence that the obligor, at the time of the filing of the motion or complaint was, or at the time of the hearing is, delinquent in child support payments or that the obligor has been erratic in making child support payments in accordance with G.S. 110-136.5(a), or that the obligor has requested that income withholding begin in accordance with G.S. 110-136.5(b), the court shall enter an order for income withholding, unless:

(1) The obligor proves a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligee's motion or independent action alleging that the obligor is delinquent or has been erratic in making child support payments; or

(2) The court finds that the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or

(3) The court finds that the obligor has no disposable income subject to withholding or that withholding is not feasible for any other reason.

If the obligor fails to respond or appear, the court shall hear evidence and enter an order as provided herein.

(c1) Immediate income withholding. In non-IV-D cases in which a child support order is initially entered on or after January 1, 1994, an obligor is subject to income withholding immediately upon entry of the order, unless either of the following applies:

a. One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding.

b. A written agreement is reached between the parties that provides for an alternative arrangement.

The term "good cause" as used in this subsection includes a reasonable and workable plan for consistent and timely payments by some means other than income withholding. In considering whether a plan is reasonable, the court may consider the obligor's employment history and record of meeting financial obligations in a timely manner.

In entering an order for immediate income withholding under this subsection, the court shall follow the requirements and procedures as specified in other sections of this Article, including amount to be withheld, multiple withholdings, notice to payor, and termination of withholding.

(d) Notice to payor and obligor. If an order for income withholding is entered, a notice of obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 4, Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(e) Modification of withholding. When an order for withholding has been entered under this section, any party may file a motion seeking modification of the withholding based on changed circumstances. The clerk or the court on its own motion may initiate a hearing for modification when it appears that modification of the withholding is required or appropriate. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 60; 1989, c. 601, s. 4; 1993, c. 517, s. 2.)

**Effect of Amendments.** — The 1993 amendment, effective January 1, 1994, and applicable to all orders entered on or after that date, added subsection (c1).

## CASE NOTES

**It was not error for a trial court to enter an order to withhold plaintiff's wages to collect child support arrearages** that had been reduced to judgment. Griffin v. Griffin, 103 N.C. App. 65, 404 S.E.2d 478 (1991).

## ARTICLE 10.

## *Prevention of Child Abuse and Neglect.*

### § 110-148. Council on Prevention of Child Abuse and Neglect.

(a) For purposes of implementing this program, the State Board of Education shall designate the Interagency Advisory Council on Community Schools in the Department of Public Instruction as the Advisory Council on Prevention of Child Abuse and Neglect, hereinafter called the Council.

(b) Staff and support services for implementing this program shall be provided by the Division of Community Schools in the Department of Public Instruction.

(c) In order to carry out the purposes of this Article:

(1) The Council shall, with the assistance of the Division of Community Schools, review applications and make recommendations to the State Board of Education concerning the awarding of contracts pursuant to this Article.

(2) The State Board of Education shall contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to operate community-based educational and service programs designed to prevent the occurrence of child abuse and neglect. Every contract entered into by the State Board of Education shall contain provisions that at least twenty-five percent (25%) of the total funding required for a program be provided by the administering organization in the form of in-kind or other services and that a mechanism for evaluation of services provided under the contract be included in the services to be performed. In addition, every proposal to the Council for funding pursuant to this Article shall include assurances that the proposal has been forwarded to the local Department of Social Services for comment so that the Council may consider coordination and duplication of effort on the local level as criteria in making recommendations to the State Board of Education.

(3) The State Board of Education shall, with the assistance of the Division of Community Schools, develop appropriate guidelines and criteria for awarding contracts pursuant to this Article. These criteria shall include, but not be limited to: documentation of need within the proposed geographical impact area; diversity of geographical areas of programs funded pursuant to this Article; demonstrated effectiveness of the proposed strategy or program for preventing child abuse and neglect; reasonableness of implementation plan for achieving stated objectives; utilization of community resources including volunteers; provision for an evaluation component that will provide outcome data; plan for dissemination of the program for implementation in other communities; and potential for future funding from private sources.

(4) The State Board of Education shall, with the assistance of the Division of Community schools, develop guidelines for

regular monitoring of contracts awarded pursuant to this Article in order to maximize the investments in prevention programs by the Children's Trust Fund and to establish appropriate accountability measures for administration of contracts.

(5) The State Board of Education shall develop a State plan for the prevention of child abuse and neglect for submission to the Governor, the President of the Senate, and the Speaker of the House no later than January 1, 1987.

(d) To assist in implementing this Article, the State Board of Education may accept contributions, grants, or gifts in cash or otherwise from persons, associations, or corporations. All moneys received by the State Board of Education from contributions, grants or gifts and not through appropriation by the legislature shall be deposited in the Children's Trust Fund. Disbursements of the funds shall be on the authorization of the State Board of Education or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control, such funds shall be subject in all respects to State law and regulations, but no appropriation shall be required to permit expenditure of the funds. (1983, c. 894, s. 1; 1993 (Reg. Sess., 1994), c. 677, s. 1.)

**Effect of Amendments.** — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, in subdivision (c)(5) deleted "shall, with the assistance of the Division of Community Schools, report to the General Assembly at the time of its convening on odd numbered years the use of these funds and" preceding "shall develop."

# Chapter 111.

# Aid to the Blind.

### Article 2.

### Aid to the Needy Blind.

Sec.

111-18. Payment of awards.
111-23. (Effective October 1, 1994 — See editor's note) Misrepresentation or fraud in obtaining assistance.
111-27.1. Department of Human Resources authorized to conduct certain business operations.
111-28. Department of Human Resources authorized to receive federal, etc., grants for benefit of needy blind; use of information concerning blind persons.

### Article 3.

### Operation of Vending Facilities on State Property.

Sec.

111-43. Installation of coin-operated vending machines.
111-47. Exclusions.

### Article 4.

### Operation of Highway Vending Facilities on North Carolina Highways.

111-48. Preference to blind persons in operation of highway vending facilities.
111-49. Definitions as used in this Article.
111-50. Operations of highway vending.
111-51. Priority for specific blind vendors.
111-52. Profits from Highway Vending Fund.

## ARTICLE 2.

## *Aid to the Needy Blind.*

### § 111-18. Payment of awards.

After an award to a blind person has been made by the board of county commissioners, and approved by the Department of Human Resources the Department of Human Resources shall thereafter pay to such person to whom such award is made the amount of said award in monthly payments, or in such manner and under such terms as the Department of Human Resources shall determine. Such payment shall be drawn upon such funds in the hands of the State Treasurer, at the instance and request and upon a proper voucher signed by the Secretary of Human Resources, and shall not be subject to the provisions of the Executive Budget Act as to approval of said expenditure.

It is intended that awards paid to recipients under this Article be for the purpose of assisting in defraying the recipient's day-to-day living expenses. To better achieve this purpose it is hereby provided that no moneys belonging to a recipient of aid to the blind under this Article identifiable as moneys paid pursuant to an aid to the blind award shall be subject to levy under execution, attachment or garnishment. (1937, c. 124, s. 7; 1971, c. 177; c. 603, s. 2; 1973, c. 476, s. 143; 1993, c. 257, s. 8.)

**Effect of Amendments.** — The 1993 amendment, effective July 1, 1993, in the second sentence of the first paragraph, deleted "made by warrant of the State Auditor" preceding "drawn upon such funds".

## § 111-23. (Effective October 1, 1994 — See editor's note) Misrepresentation or fraud in obtaining assistance.

Any person who shall obtain, or attempt to obtain, by means of a willful, false statement, or representation, or impersonation, or other fraudulent devices, assistance to which he is not entitled shall be guilty of a Class 2 misdemeanor. The superior court and the recorders' courts shall have concurrent jurisdiction in all prosecutions arising under this Article. (1937, c. 124, s. 12; 1993, c. 539, s. 825; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence substituted "Class 2 misdemeanor" for "misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment".

## § 111-27.1. Department of Human Resources authorized to conduct certain business operations.

For the purpose of assisting blind persons to become self-supporting the Department of Human Resources is hereby authorized to carry on activities to promote the rehabilitation and employment of the blind, including the operation of various business enterprises suitable for the blind to be employed in or to operate. The Executive Budget Act shall apply to the operation of such enterprises as to all appropriations made by the State to aid in the organization and the establishment of such businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind persons operating such businesses, and other expenses thereof, from funds derived from local subscriptions and from the day-by-day operations shall not be subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement thereof applicable to State funds but shall be supervised by the Department of Human Resources. All of the business operations under this law, however, shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

After September 30, 1983, Randolph-Sheppard vendors will no longer be State employees. Blind licensees operating vending facilities under contract with the North Carolina Department of Human Resources, Division of Services for the Blind, are independent contractors. (1945, c. 72, s. 2; 1971, c. 1025, s. 1; 1973, c. 476, s. 143; 1983, c. 867, s. 1; 1993, c. 257, s. 9.)

**Effect of Amendments.** — The 1993 amendment, effective July 1, 1993, in the last sentence of the first paragraph, substituted "the oversight of" for "regular audits by" and added at the end "pursuant to Article 5A of Chapter 147 of the General Statutes".

## § 111-28. Department of Human Resources authorized to receive federal, etc., grants for benefit of needy blind; use of information concerning blind persons.

The Department of Human Resources is hereby authorized and empowered to receive grants-in-aid from the federal government or any State or federal agency for the purpose of rendering other services to the needy blind and those in danger of becoming blind; and all such grants so made and received shall be paid into the State treasury and credited to the account of the Department of Human Resources, to be used in carrying out the provisions of this law.

The Commission for the Blind is hereby further authorized and empowered to make such rules and regulations as may be required by the federal government or State or federal agency as a condition for receiving such federal funds, not inconsistent with the laws of this State.

Whenever the words "Social Security Board" appear in G.S. 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.

The Department of Human Resources is hereby authorized and empowered to enter into reciprocal agreements with public welfare agencies in other states relative to the provision of assistance and services to residents, nonresidents, or transients, and cooperate with other agencies of the State and federal governments in the provisions of such assistance and services and in the study of the problems involved.

The Department of Human Resources is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the Department.

It shall be unlawful, except for purposes directly connected with the administration of aid to the needy blind and in accordance with the rules and regulations of the Department of Human Resources, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the needy blind, directly or indirectly derived from the records, papers, files, or communications of the Department of Human Resources or the board of county commissioners or the county social services department, or acquired in the course of the performance of official duties.

Notwithstanding the above, the Department of Human Resources is authorized to release to the North Carolina Department of Motor Vehicles and the North Carolina Department of Revenue the name and medical records of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information and documents released to the Department of Motor Vehicles and the Department of Revenue shall be treated by those departments as confidential for their use only and shall not be released by them to any person for commercial or political purposes or for any purpose not directly connected with the administration of Chapters 20 and 105 of the General Statutes of this State. The Department of Human Resources may also release to the North Carolina Library for the Blind and Physically Handicapped of the Department of Cultural Resources, the name and address of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information released to the North Carolina Library for the Blind and Physically Handicapped shall be treated as confidential for its use only and shall not be released to any person for commercial or political purposes or for any purpose not directly connected with providing information concerning services offered by the North Carolina Library for the Blind and Physically Handicapped. (1939, c. 124; 1941, c. 186; 1969, cc. 871, 982; 1973, c. 476, s. 143; 1989, c. 752, s. 141.)

**Editor's Note.** — Session Laws 1989, c. 752, s. 167 contains a severability clause.

**Effect of Amendments.** — The 1989 amendment, effective July 1, 1989, added the last two sentences of the last paragraph.

## ARTICLE 3.

## *Operation of Vending Facilities on State Property.*

### § 111-43. Installation of coin-operated vending machines.

In locations where the Department determines that a vending facility may not be operated or should not continue to operate due to insufficient revenues to support a blind vendor or due to the lack of qualified blind applicants, the Department shall have the first opportunity to secure, by negotiation of a contract with one or more licensed commercial vendors, coin-operated vending machines for the location. Profits from coin-operated vending machines secured by the Department shall be used by the Department for the support of programs that enable blind people to live more independently, including medical, rehabilitation, independent living, and educational services offered by the Division of Services for the Blind. (1973, c. 1280, s. 1; 1991, c. 689, s. 221.4(a); 1991 (Reg. Sess., 1992), c. 984, s. 1.)

**Editor's Note.** — Session Laws 1991, c. 689, s. 221.4(b) provided that the amendment to this section by s. 221.4(a) would expire June 30, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 984, s. 1, effective July 20, 1992, deleted the phrase "except for up to $300,000 of the highway vending profits each fiscal year that may be used to support the Medical Eye Care Program and to provide needed technological equipment and related activities within the Division" in the second sentence of this section. This language had apparently expired effective June 30, 1992, pursuant to Session Laws 1991, c. 689, s. 221.4(b).

Session Laws 1991, c. 689, s. 353 is a severability clause.

**Effect of Amendments.** — The 1991 amendment, effective July 1, 1991, added "except for up to $300,000 of the highway vending profits each fiscal year that may be used to support the Medical Eye Care Program and to provide needed technological equipment and related activities within the Division" following "visually handicapped." For the expiration of this amendment, see the Editor's note.

The 1991 (Reg. Sess., 1992) amendment, effective July 20, 1992, inserted "to support a blind vendor or due to the lack of qualified blind applicants" in the first sentence, and substituted the language beginning "programs that enable" for "vending facilities operated by the visually handicapped, except for up to $300,000 of the highway vending profits for each fiscal year that may be used to support the Medical Eye Care Program and to provide needed technological equipment and related activities within the Division" in the second sentence. See the Editor's notes.

## § 111-47. Exclusions.

(a) This Article is not intended to cover food services provided by hospitals or residential institutions as a direct service to patients, inmates, trainees, or otherwise institutionalized persons, nor to cover coin-operated vending machines located in State facilities operated under the authority of G.S. 122C.

(b) This Article shall not prohibit the continued use of coin-operated vending machines currently the property of the Division of Services for the Blind of the Department of Human Resources and now part of the vending-stand program. (1973, c. 1280, s. 1; 1991 (Reg. Sess., 1992), c. 984, s. 2.)

**Effect of Amendments.** — The 1991 (Reg. Sess., 1992) amendment, effective July 20, 1992, added the language beginning "nor to cover coin-operated" in subsection (a).

## ARTICLE 4.

## *Operation of Highway Vending Facilities on North Carolina Highways.*

## § 111-48. Preference to blind persons in operation of highway vending facilities.

In order to provide support for programs for the blind and to further promote employment opportunities for blind persons, the Department of Human Resources may operate automatic vending machines on State property on North Carolina highways and shall give preference to blind persons in the operation of these facilities. (1991 (Reg. Sess., 1992), c. 984, s. 3.)

**Editor's Note.** — Session Laws 1991 (Reg. Sess., 1992), c. 984, s. 4 made this article effective upon ratification. The act was ratified July 20, 1992.

## § 111-49. Definitions as used in this Article.

(a) "Automatic vending" means a coin, currency, token, ticket, or credit card operated machine that dispenses food, drinks, or sundries.

(b) "Blind vendor" means a blind person, as specified in G.S. 105-249(b), who has been licensed by the Division of Services for the Blind to operate a vending stand in a public building.

(c) "Highway vending facilities" means automatic vending operations located on North Carolina highways in Welcome Centers and rest areas designated by the State. (1991 (Reg. Sess., 1992), c. 984, s. 3.)

## § 111-50. Operations of highway vending.

(a) In locations on North Carolina highways where the Department of Human Resources determines that automatic vending is suitable, the Department shall authorize the Division of Services for the Blind to contract with blind vendors in the operation of highway vending facilities. The contracts shall be reviewed and renegotiated by the Division every two years and shall be reviewed by the Transfer and Promotion Committee. The Commission for the Blind shall adopt rules necessary to govern the operations. The highway vending program shall be a part of the Business Enterprises Program operated under the Randolph-Sheppard Act, 20 U.S.C. § 107a.

(b) Profits returned to the Division shall be based upon operator net income and determined as follows:

(1) The Division shall charge seventeen percent (17%) set-aside on operator net income up to two and one-half times the average operator income for the previous State fiscal year.

(2) The Division shall charge fifty percent (50%) set-aside on operator net income between two and one-half and three and one-half times the average operator income for the previous State fiscal year.

(3) The Division shall charge sixty-five percent (65%) set-aside on all operator net income over three and one-half times the average operator income for the previous State fiscal year. (1991 (Reg. Sess., 1992), c. 984, s. 3.)

## § 111-51. Priority for specific blind vendors.

Blind vendors who were operating highway vending facilities as of July 31, 1991, and who continue to operate those facilities shall be given priority in renegotiating contracts under this Article to continue to operate those same facilities. (1991 (Reg. Sess., 1992), c. 984, s. 3.)

## § 111-52. Profits from Highway Vending Fund.

Profits generated by highway vending locations as of June 30, 1992, and deposited in a special fund in accordance with the Administrative Policies and Procedures Manual of the Office of the State Controller shall be reserved for the construction and maintenance of highway vending facility projects. (1991 (Reg. Sess., 1992), c. 984, s. 3.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

*October 1, 1994*

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1994 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

*Attorney General of North Carolina*

# STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

*October 1, 1996*

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1996 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

Michael F. Easley

*Attorney General of North Carolina*